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**HON. PETER B. KRAUSER**  
Chief Judge  
Court of Special Appeals

**MALA MALHOTRA-ORTIZ, ESQ.**  
Director of ADR Programs



# **National Survey of Appellate Mediation**

## **Spring 2012**

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# Survey

## STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established?
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?
3. Are mediations ordered by the court or is mediation an optional service provided upon request?
4. When did the program begin conducting mediations?
5. How many civil appeals are administered by your court annually?
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.
7. How many cases were mediated in the most recent year?
8. How many cases settled in mediation in the most recent year?  
Full settlements \_\_\_\_\_ Partial settlements \_\_\_\_\_
9. How does your program define a "partial settlement?"
10. Does your program offer mediation in cases with self-represented parties? If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?
11. Who serves as mediators in your program? How many of such mediators are currently active in your program?
12. What are the required qualifications for appellate mediators in your program?
13. How are mediators selected or designated for a particular case?
14. Are your cases mediated by one mediator or are they co-mediated?
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.
17. What is the annual cost of the program?

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?
19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe.
21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)
- 1) \_\_\_\_\_ %
- 2) \_\_\_\_\_ %
- 3) \_\_\_\_\_ %
- 4) \_\_\_\_\_ %
- 5) \_\_\_\_\_ %
- 6) \_\_\_\_\_ %
- 7) \_\_\_\_\_ %
21. If you are able to provide settlement statistics per case type, please do so.
22. What types of civil cases, if any, are ineligible for mediation in your program?
23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.
24. What do you rate as the most significant successes of your appellate mediation program to date?
25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?
26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

28. Has your program been evaluated? If so, could you share the results of the evaluation?

Mediation Program Name:

Court:

Court Case Jurisdiction:

Court Geographic Jurisdiction:

Name of Mediation Program Director/Administrator:

Address:

Telephone:

Email:

Website:

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

# **Survey Response Summaries**

2012 MEDIATION SURVEY

STATE	#1 YEAR	#2 METHOD	#5 CIVIL APPEALS	#7 CASES MEDIATED	#8 SETTLED	#9 PARTIAL	#10 PRO SE	#14 CO- MEDIATION	#20 SANCTIONS	#21 CASE TYPES (See Detailed Spread Sheet)	#28 EVALUATED
Alabama-Supreme Ct. & Civil Appeals Ct.	2003	Rule	1780	184	full 91 / partial 3 (50%)	Yes	No	No	Yes	Yes	Yes
Alaska-Supreme Ct.	2001	Rule	~425	10	8 (80%)	No	Yes	No	Yes	Yes	No
Arizona-Div. 1	1994	Rule	833	17	10 (59%)	No	No	No	Yes	Yes	No
Arizona-Div 2	1998	Rule	184	21	full 14 / partial 1 (67%)	Yes	Yes	Yes	Yes	Yes	Yes
Arkansas	2008	Court Order	417	2	2 full (100%)	Yes	No	No	No	Yes	No
California-1st	2000	Rule	~100	~95	(~50%)	No	No	Yes	Yes	N/A	No
California-2nd	2002	Rule	2715	66	37 (56%)	Yes	No	No	Yes	No	Yes
California-3rd	2006	Rule	~517	95	90 (95%)	No	Yes	No	Yes	Yes	No
California-4th	1991	Rule	~500	45	full 21 / partial 1 (47%)	Yes	Yes	No	Yes	Yes	No
California-5th	2011	Rule	39	9	2 (22%)	unknown	No	No	Yes	No	No
California-6th	2009	Rule	~115	3	1 (33%)	Yes	No	No	Yes	Yes	No
Connecticut	1987	Rule	~1000	457	(~30%)	No	No	No	Yes	No	No
Florida-5th	2001	Admin. Order	~440	125	full 31 / partial 1 (25%)	Yes	No	No	Yes	Yes	No

2012 MEDIATION SURVEY

STATE	#1 YEAR	#2 METHOD	#5 CIVIL APPEALS	#7 CASES MEDIATED	#8 SETTLED	#9 PARTIAL	#10 PRO SE	#14 CO- MEDIATION	#20 SANCTIONS	#21 CASE TYPES (See Detailed Spread Sheet)	#28 EVALUATED
Hawaii	1995	Rule	740	32	full 12 / partial 2 (38%)	Yes	Yes	Yes	Yes	Yes	No
Kentucky	1985	Rule	1400	400	(~39%)	No	No	No	Yes	Yes	No
Maryland	2010	Rule	1300	187	full 107 / partial 13 (57%)	Yes	Yes	Yes	Yes	Yes	Yes
Minnesota	2011	Rule	1414	120	(~37%)	No	Yes	No	Yes	Yes	No
Missouri-Eastern	~1975	Rule	1177	95	40 (42%)	No	No	No	Yes	Yes	No
Missouri-Western	1978	Rule	~850	81	25 (31%)	No	Yes	No	Yes	Yes	No
Montana	1997	Rule	370	159	22 (14%)	No	Yes	No	Yes	Yes	Yes
Nevada	1997	Admin. Order	~825	404	full 230 / partial 3 (57%)	Yes	No	No	Yes	Yes	Yes
New Hampshire	2009	Rule	910	28	10 (36%)	Yes	Yes	No	No	Yes	No
New Mexico	1998	Misc. Order	No	90	full 46 / partial 2 (51%)	Yes	Yes	No	Yes	No	No
New York-2nd	1974	Rule	No	1951	841 (43%)	Yes	Yes	No	No	No	No
New York-3rd	1997	Rule	1347	370	122 (33%)	Yes	Yes	No	Yes	Yes	No
North Carolina	2002	Rule	~850	61	27 (44%)	No	Yes	No	No	Yes	No

2012 MEDIATION SURVEY

STATE	#1 YEAR	#2 METHOD	#5 CIVIL APPEALS	#7 CASES MEDIATED	#8 SETTLED	#9 PARTIAL	#10 PRO SE	#14 CO- MEDIATION	#20 SANCTIONS	#21 CASE TYPES (See Detailed Spread Sheet)	#28 EVALUATED
North Dakota	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Ohio-4th	2005	Rule	~112	30	14 (47%)	Yes	Yes	No	No	Yes	No
Ohio-6th	1992	Rule	322	26	11 (42%)	No	Yes	No	Yes	Yes	No
Ohio-8th	1990	Rule	~800	322	full 64 / partial 2 (20%)	Yes	Yes	No	Yes	Yes	No
Ohio-10th	1989	Rule	No	217	88 (41%)	No	Yes	No	Yes	Yes	Yes
Ohio-11th	2005	Rule	291	100	71 (71%)	Yes	Yes	No	Yes	Yes	No
Ohio-12th	2000	Rule	~340	50	full 27 / partial 1 (54%)	Yes	Yes	No	Yes	Yes	No
Oklahoma	1993	Rule	1288	35	22 (63%)	No	No	No	No	Yes	No
Oregon	1995	Rule	~400	144	full 115 / partial 3 (80%)	Yes	Yes	No	Yes	Yes	Yes
Pennsylvania- Commonwealth	1999	Court Order	~2500	165	71 (43%)	No	No	No	Yes	Yes	No
Pennsylvania-Western	2008	Admin. Order	No	65	38 (58%)	Yes	Yes	No	No	Yes	No
Pennsylvania-Eastern	2006	Admin. Order	No	95	40 (42%)	Yes	Yes	No	No	Yes	No
Rhode Island	2003	Rule	170	71	28 (39%)	No	No	No	Yes	Yes	Yes

2012 MEDIATION SURVEY

STATE	#1 YEAR	#2 METHOD	#5 CIVIL APPEALS	#7 CASES MEDIATED	#8 SETTLED	#9 PARTIAL	#10 PRO SE	#14 CO- MEDIATION	#20 SANCTIONS	#21 CASE TYPES (See Detailed Spread Sheet)	#28 EVALUATED
South Carolina	2011	Court Order	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Tennessee	2009	Rule	219	10	full 4 / partial 6 (40%)	Yes	Yes	Yes	Yes	Yes	No
Texas-4th	1995	Rule	~550	16	6 (38%)	No	No	No	No	No	No
Texas-14th	1997	Court Order	650	36	9 (25%)	No	Yes	No	Yes	No	No
Utah	1998	Rule	314	97	48 (49%)	Yes	Yes	No	Yes	Yes	No

STATE	#21 CASE TYPES	#21 SETTLEMENT STATISTICS
Alabama-Supreme Ct. & /  Civil Appeals Ct.	Contracts-Commercial 20% Contracts-Arbitration 17% Tort-Negligence 9% / Domestic-Divorce 31% Domestic-Mod/Custody 24% Workers Comp. 23%	56% 65% 50% 44% 31.5% 60%
Alaska-Supreme Ct.	Domestic 30% Personal Injury 20% Contracts 45% Other 5%	N/A
Arizona-Div. 1	Contracts 35-45% Divorce 17-25% Tort 12-36%	50% 50% 80%
Arizona-Div 2	Domestic Relations 17% Worker's Comp. 10% Attorney's Fees 10% Construction Lien 10% Financial 10% Probat/Estate 7% Employment 7% Insurance 3% Personal Injury 3% Miscellaneous 23%	N/A
Arkansas	Probate 57% Worker's Comp 28% Contract 14%	50% 50% 0%
California-1st	N/A	N/A
California-2nd	N/A	N/A

STATE	#21 CASE TYPES	#21 SETTLEMENT STATISTICS
California-3rd	Tort Contract Family Law Real Property Equitable Action Writ Proceedings Probate Other	43.4% 38% 19% 9.4% 9.4% 3.7% 2% 2%
California-4th	Tort 33% Contract 27% Real Property 16% Employment 13% Family Law 4% Environmental 2% Probate/Trust 4%	53% 46% 50% 50% 50% 0% 50%
California-5th	N/A	N/A
California-6th	Contract 90%  Tort 10%	N/A
Connecticut	N/A	N/A
Florida-5th	Foreclosure 24% Contract 15% Personal Injury 12% Family w/children 8% Family w/o children 8% Insurance 4% Other 29%	N/A
Hawaii	Divorce Trusts Workers Comp. Contract	N/A

STATE	#21 CASE TYPES	#21 SETTLEMENT STATISTICS
Kentucky	Domestic 35% Tort 30% Contract 20% Real Property 10% Administrative Law 5%	N/A
<b>Maryland</b>	<b>Domestic 30%</b> <b>Contracts 24%</b> <b>Torts 17%</b> <b>Real Property/Zoning 12%</b> <b>Foreclosure 10%</b> <b>Workers Comp 4%</b> <b>Estates &amp; Trusts 3.5%</b> <b>Administrative 3.5%</b> <b>Corporations 1.4%</b>	<b>69%</b> <b>74%</b> <b>68%</b> <b>68%</b> <b>55%</b> <b>66%</b> <b>70%</b> <b>70%</b> <b>75%</b>
Minnesota	Family Law 100%	~37%
Missouri-Eastern	Contract 19% Tort 7.5% Insurance 13% Domestic 18% Attorney Fees 5%	25.5% 15% 10% 13% 5%
Missouri-Western	Family Law 60%  Other 40%	N/A
Montana	Workers Comp. Money Judgments Domestic Relations	33% 14% 8%

STATE	#21 CASE TYPES	#21 SETTLEMENT STATISTICS
Nevada	Contract 13% Personal Injury 12% Other (complex) 11% Domestic 11% Workers Comp. 9% Tort 7% Foreclosure 7% Employment 5% Medical Malpractice 5% Real Property 4% Corporate 4% Probate 2% Construction Defect 2% Government 2% Administrative 2% Landlord/Tenant 2% Water/Mining 1% Tax 1% Commercial 1%	49% 51% 55% 56% cust./59% non 60% 47% 41% 43% 34% 46% 57% 65% 58% 37% 49% 48% 26%w / 67%m 35% 51%
New Hampshire	Civil 50% Administrative 25% Domestic 25%	28% 57% 28%
New Mexico	N/A	N/A
New York-2nd	N/A	N/A
New York-3rd	Tort 30% Contract 17% Child Support, etc. 13% Matrimonial 12% Estate 12% Foreclosure 8% Miscellaneous 8%	N/A

STATE	#21 CASE TYPES	#21 SETTLEMENT STATISTICS
North Carolina	Workers Comp. 60% Family Law 20% Tort 10% Other 10%	N/A
North Dakota	N/A	N/A
Ohio-4th	Tort 30% Foreclosure 23% Real Property 13% Domestic 10% Contract 6% Landlord/Tenant 6% Employment 6%	N/A
Ohio-6th	Contract 46% Foreclosure 26% Divorce 7% Quiet Title 3% Real Property 3% Tort 7% Consumer Protect 3%	N/A
Ohio-8th	Contract 40% Tort 30% Domestic 10% Probate 10% Administrative 5% Other 5%	N/A
Ohio-10th	Commercial 20% Contract 20% Foreclosure 10% Domestic/Decree 7.5% Domestic/Post-Decree 10% Tort 12.5% Administrative 5% Probate 2.5% Landlord/Tenant 5% Creditor/Debtor 7.5%	N/A

STATE	#21 CASE TYPES	#21 SETTLEMENT STATISTICS
Ohio-11th	Contract 25% Domestic 25% Foreclosure 12% Small Claims 10% Administrative 6% Torts 15% Probate 8%	N/A
Ohio-12th	Domestic Contract Tort Small Claims Workers Comp. Original Actions	N/A
Oklahoma	Contract 34% Domestic 37% Employment 9% Real Property 6% Landlord/Tenant 3% Personal Injury 3% Other 8%	N/A
Oregon	General Civil 50% Domestic 25% Workers Comp. 10% Other 15%	81% 70% N/A N/A
Pennsylvania- Commonwealth	Workers Comp. 35% Zoning 15% Public Welfare 9% Eminent Domain 9%	~46%
Pennsylvania-Western	Tort 10% Contract 10% Domestic 50% Estates/Trusts 20% Real Property 10%	N/A

<b>STATE</b>	<b>#21 CASE TYPES</b>	<b>#21 SETTLEMENT STATISTICS</b>
Pennsylvania-Eastern	Tort 40% Contract 20% Domestic 10% Foreclosure 10% Miscellaneous 20%	N/A
Rhode Island	Other 30% Personal Injury 25% Contract 22% Property 10% Wills/Trusts 10% Employment 9% Probate 2%	31% 45% 26% 22% 11% 13% 0%
South Carolina	N/A	N/A
Tennessee	Medical Malpractice Other Personal Injury Real Property Workers Comp.	N/A
Texas-4th	N/A	N/A
Texas-14th	N/A	N/A
Utah	General Civil 64% Administrative/Agency 20% Domestic 14% Interlocutory 1% Juvenile 1%	50% 47% 50% 0% 100%

# **Survey Responses by State**

Survey Response

# Alabama

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established?

2003

2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?

In the spring of 2002, after having preliminarily researched the concept of appellate mediation for civil appeals in Alabama, the Alabama Supreme Court Standing Committee on the Rules of Appellate Procedure recommended that the Supreme Court appoint a committee to make an in-depth evaluation of the feasibility of appellate mediation in Alabama and to draft rules governing mediation.

In May 2002, the Supreme Court Committee on Appellate Mediation met for the first time. The Committee studied state and federal appellate mediation programs from around the country. The committee proposed a program similar to the mediation program used by the District Court of Appeal, Fifth District, Florida. The Committee on Appellate Mediation drafted rules for the proposed program and, after having reviewed the proposed rules, on July 17, 2003, the Supreme Court adopted Rule 55, Alabama Rules of Appellate Procedure, which provides for appellate mediation. On November 17, 2003, the Supreme Court adopted the Alabama Appellate Mediation Rules, which govern the mediation procedure.

3. Are mediations ordered by the court or is mediation an optional service provided upon request?

Mediation is court ordered 98% of the time, but there have been a few instances where it has been requested by the parties.

4. When did the program begin conducting mediations?

January 2004

5. How many civil appeals are administered by your court annually?

Alabama Court of Civil Appeals – On average, 1,200 cases are docketed and of those, 1,100 are civil appeals.

Supreme Court of Alabama – On average, 1,828 cases are docketed and of those, 680 are civil appeals.

6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.

Selection is made on a case by case basis. The standard of review is very important in the appellate review of a case; however, during the mediation process, when screening, the Appellate Mediation Administrator for the Court of Civil Appeals looks more to the conflict/dispute. The standard of review, reversal rates, and other matters may be brought to the attention of the parties/attorneys by the mediator during the mediation process.

The process begins with a review of the docketing statement and, if it appears the case might be appropriate for appellate mediation; screening forms are sent to the attorneys asking for their input on whether they think the case is appropriate for appellate mediation. That form is confidential and filed only with the Appellate Mediation Office. It is not served on opposing counsel. The Confidential Statement is reviewed along with the information on the docketing statement and any attachments (usually the complaint; any amended complaint; motion for summary judgment (if summary judgment was entered in the case); the final decision; post-judgment motions, if any; and any ruling thereon. After this review a determination is made as to whether the case will be referred to appellate mediation or reinstated to the appellate docket.

7. How many cases were mediated in the most recent year?  
184 cases were referred to appellate mediation in 2011, from both the Supreme Court and the Court of Civil Appeals.
8. How many cases settled in mediation in the most recent year?  
Full Settlements from both courts in 2011: 91  
Partial Settlements from both courts in 2011: 3

9. How does your program define a “partial settlement?”

A partial settlement may result in one or more, but not all, issues on appeal being resolved. A partial settlement may also result when the parties reach an agreement and one or more parties to the appeal are dismissed from the appeal. A partial settlement is noted in the mediation stats; however, this category is not used in computing the settlement/impasse rates.

10. Does your program offer mediation in cases with self-represented parties? If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?

No

11. Who serves as mediators in your program? How many of such mediators are currently active in your program?

This program does not have staff mediators. Rather, we have an approved roster of appellate mediators (Rostered Mediators) who have met criteria as set forth in Rule 4(a)(1), Alabama Rules of Appellate Mediation. Currently we have 160 Rostered Appellate Mediators.

Additionally, parties may select a person as a mediator who is not on the approved roster of appellate mediators. In order to serve as a mediator on an appellate case, they must meet criteria set forth in Rule 4(a)(2), Alabama Rules of Appellate Mediation. As of January 2012, we have 162 Non-Rostered Appellate Mediators on file.

12. What are the required qualifications for appellate mediators in your program?

See Rule 4, Alabama Rules of Appellate Mediation, attached with this survey.

13. How are mediators selected or designated for a particular case?

95% of the time the mediator is jointly selected by the attorneys in the appeal.

5% of the time they are selected by the administrator for the program, if the attorneys were unable to jointly agree.

14. Are your cases mediated by one mediator or are they co-mediated?

One mediator.

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

The Alabama Rules of Appellate Mediation encourage, but do not require, the facilitative method. See Rule 5(h), ARAM.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

The Supreme Court Committee on Appellate Mediation, formed in 2002, consists of Supreme Court justices; retired justices; the clerks of the Supreme Court and Court of Civil Appeals; the Executive Director of the Alabama Center for Dispute Resolution; the Chair of the Supreme Court of Alabama Standing Committee on the Rules of Appellate Procedure; and the Administrators and Program Coordinator of the Alabama Appellate Mediation Program. The Committee provides general direction as needed, but is not involved in the daily process of the program. The program is confidential and specific information regarding mediated cases is not released to the courts. The justices and judges of the two courts have no active role in the mediation program. The administrator for each court informs them of the categories of cases which are being screened/referred for mediation and the reasons why other categories are not being screened/referred. Statistical information is provided to both courts on a monthly basis.

17. What is the annual cost of the program?

The Supreme Court of Alabama provides the office space, furniture and equipment for the Appellate Mediation Program. Some office supplies are split between the Supreme Court of Alabama and the Alabama Court of Civil Appeals. There is one full time staff person, the Program Coordinator, and the salary, various taxes, health insurance and retirement expenses are paid by the Alabama Supreme Court at roughly \$60,000 per year for that person.

The two administrators for the program, one from the Alabama Supreme Court and one from the Alabama Court of Civil Appeals, do not earn extra salary for working with the program. They are on staff in the clerk's office in each of those courts.

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?

Our program has one full time staff person and two administrators who work on mediation part time. Staff members do not serve as mediators.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.

Parties are not permitted to simply "opt-out" of mediation once it has been ordered by the court. However, there have been a few instances where a party has filed a motion to reconsider the referral to mediation, and that case may be removed from the mediation docket at the discretion of the administrator.

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons arising from the mediation process? If so, have such sanctions been imposed? Please describe.

Yes, sanctions have been imposed in a few instances. Rule 5(i), Alabama Rules of Appellate Mediation states: "Neither the appellate mediation office nor the appellate mediation administrator has the authority to impose sanctions. If, however, a party refuses to attend a mediation session or sessions, unreasonably delays the scheduling of mediation, or otherwise unreasonably impedes the conduct of the program, the court may reinstate the case to the appellate docket, and the court may impose sanctions. Sanctions may include, but are not limited to, assessing reasonable expenses caused by the failure of the mediation, including an award of mediator and/or attorney fees; assessing all or a portion of the appellate costs; dismissal of the appeal; or taking such other appropriate action as the circumstances may warrant. No motion for sanctions by litigants or

recommendation for sanction by the mediation office will be presented to the appellate court until after the court has decided the case on the merits.” Sanctions from \$200 to \$500 have been imposed by the Supreme Court of Alabama on lawyers failing to comply with the mediation rules after notices and show cause orders have been issued by the Court. The Court of Civil Appeals has not imposed sanctions on lawyers regarding the appellate mediation program.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

For Alabama Court of Civil Appeals Cases:

Domestic Relations - Original Divorce	31%
Domestic Relations - Modifications/Child Custody	24%
Workers' Compensation	23%

For Supreme Court of Alabama Cases:

Contracts – Commercial	20%
Contracts – Arbitration	17%
Tort – Negligence (Vehicular)	9%

21. If you are able to provide settlement statistics per case type, please do so.

Of the 31% of Domestic Relations –Original Divorce, there is a 44% settlement rate.

Of the 24% of Domestic Relations – Modifications/Child Custody, there is a 31.5% settlement rate.

Of the 23% of Workers' Compensation, there is a 60% settlement rate.

Of the 20% of Contracts-Commercial, there is a 56% settlement rate.

Of the 17% of Contracts – Arbitration, there is a 65% settlement rate.

Of the 9% Tort – Negligence (Vehicular), there is a 50% settlement rate.

22. What types of civil cases, if any, are ineligible for mediation in your program?

All civil matters within the jurisdiction of the Supreme Court of Alabama and the Alabama Court of Civil Appeals where all parties are represented by counsel are eligible for mediation. The Appellate Mediation Administrator for the Court of Civil Appeals does not send the following categories of cases: juvenile, administrative agencies, adoptions, commitments, and purely child custody cases.

In the Supreme Court, only civil appeals are screened and referred to mediation. Pro Se cases are not screened or referred and neither are State Bar issues.

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

On January 6, 2004, January 27, 2005, October 31, 2006, September 15, 2008, and October 2, 2008, the Alabama Rules of Appellate Mediation were amended.

24. What do you rate as the most significant successes of your appellate mediation program to date?

Our settlement rate, which is consistently 50% or higher each month for both the Supreme Court of Alabama and the Alabama Court of Civil Appeals.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

Education for the attorneys, as well as the general public about the appellate mediation program.

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

Within the Supreme Court of Alabama, this program has had a positive effect by disposing of the approximate annual caseload of one justice. The program is designed so that mediation occurs early in the appeals process, thus reducing workload of the clerk's office staff and justices' staff. This has been very important during these lean times.

During the past 2 term years, the Court of Civil Appeals, through the Appellate Mediation Program has fully disposed of 139 cases (certificate of judgment being issued). The program has been a great asset in disposing of cases in a speedy manner.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

**See Attachment #1**

28. Has your program been evaluated? If so, could you share the results of the evaluation?

**See Attachment #2**

Mediation Program Name: Alabama Appellate Mediation Program

Court: Supreme Court of Alabama  
Alabama Court of Civil Appeals

Court Case Jurisdiction: The Supreme Court has jurisdiction of all civil appeals not within the jurisdiction of the Court of Civil Appeals. See Section 12-2-7, Alabama Code (1975). The Court of Civil Appeals has appellate jurisdiction where the amount involved, exclusive of interest and costs, does not exceed \$50,000, appeals from administrative agencies, other than Public Service Commission, all appeals in workers' compensation cases, all appeals in domestic relations cases and all extraordinary writs arising from appeals in such cases. See Section 12-3-10, Alabama Code (1975).

Court Geographic Jurisdiction: State of Alabama

Name of Mediation Program Director/Administrator:  
Michelle Ohme  
Program Coordinator  
Celeste W. Sabel  
Administrator, Supreme Court of Alabama  
Rebecca Oates  
Administrator, Alabama Court of Civil Appeals

Address: 300 Dexter Avenue, Montgomery, AL 36104

Telephone: 334-229-0656

Email: [mediation@appellate.state.al.us](mailto:mediation@appellate.state.al.us)

Website: [judicial.alabama.gov/mediation](http://judicial.alabama.gov/mediation)

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: January 27, 2012

Michelle J. Ohme

Name



Signature

Program Coordinator

Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

## ATTACHMENT #2

## Mediator Evaluation Summary Report For Court of Civil Appeals Cases

**Total Evaluations 453**

Please note that on some evaluation forms not every question is answered.

### Origin of Appeal

Summary Judgment	42
Final Judgment (Non-Jury)	344
Final Judgment (Jury)	18
Other Appealable Order	14
Other	22

### Additional Disputes Resolved

Another Appeal	2
Trial Court Matter	26
Matter Not In Litigation	11
Other	0

### Resolution

Full	169
Partial	5
None	270
Other	5

### Average Session Time

2.76 hours
1.00 hour
2.98 hours
0 hours

### Program Rating Average - On a scale of 1 (very dissatisfied) to 5 (very satisfied)

Efficiency	4.8
Courtesy	4.8
Paperwork	4.6
Pro Bono	4.6

### Mediator's Averages

Fees Averaged	\$821
Average # of Sessions In Person	1.4
Average # of Sessions then held by Telephone	4

## Attorney Evaluation Summary Report For Court of Civil Appeals Cases

**Total Evaluations      810**

Please note that on some evaluation forms not every question is answered.

### Resolution

Direct Result	299
Indirect	0
Unrelated	1
Partial	10
None	472
Other	29

**Process Rating** - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Appropriateness	4.0	3.6
Fairness	4.8	4.7
Participation	4.9	4.8
Confidentiality	4.9	4.9
Outcome	3.3	3.4
Would Participate Again	93%	84%

**Program Rating** - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Efficiency	4.7	4.6
Paperwork	4.7	4.5
Courtesy	4.9	4.8
Mandatory Participation	4.1	3.6

**Mediator Rating** - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Impartiality	4.9	4.9
Temperament	4.9	4.9
Knowledge of Process	4.9	4.9
Knowledge of Subject	4.9	4.9

### Effect of Mediation

<b># of Appellants Who Felt It -</b>	Increased	Decreased	No Change
On Fees	108	88	136
On Costs	80	69	127
On Court Time	42	99	121

<b># of Appellees Who Felt It -</b>	Increased	Decreased	No Change
On Fees	125	91	124
On Costs	83	62	140
On Court Time	48	105	113

## Party Evaluation Summary Report For Court of Civil Appeals Cases

**Total Evaluations 684**

Please note that on some evaluation forms not every question is answered.

### Resolution

Direct Result	252
Indirect	0
Unrelated	1
Partial	10
None	391
Other	31

**Process Rating** - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Appropriateness	4.0	3.7
Fairness	4.4	4.6
Participation	4.7	4.7
Confidentiality	4.8	4.8
Outcome	3.0	3.2
Would Participate Again	65%	63%

**Program Rating** - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Efficiency	4.6	4.5
Paperwork	4.6	4.5
Courtesy	4.8	4.8
Mandatory Participation	4.3	3.9

**Mediator Rating** - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Impartiality	4.8	4.8
Temperament	4.8	4.9
Knowledge of Process	4.8	4.8
Knowledge of Subject	4.7	4.8

## Mediator Evaluation Summary Report For Supreme Court Cases

**Total Evaluations      366**

Please note that on some evaluation forms not every question is answered.

### Origin of Appeal

Summary Judgment	145
Final Judgment (Non-Jury)	51
Final Judgment (Jury)	79
Other Appealable Order	39
Other	45

### Additional Disputes Resolved

Another Appeal	14
Trial Court Matter	39
Matter Not In Litigation	9
Other	0

### Resolution

Full	142
Partial	4
None	203
Other	7

### Average Session Time

3.45 hours
1.00 hour
4.10 hours
0 hours

### Program Rating Average - On a scale of 1 (very dissatisfied) to 5 (very satisfied)

Efficiency	4.8
Courtesy	4.8
Paperwork	4.4
Pro Bono	4.7

### Mediator's Averages

Fees Averaged	\$2,009
Average # of Sessions In Person	1.4
Average # of Sessions then held by Telephone	2

## Attorney Evaluation Summary Report For Supreme Court Cases

**Total Evaluations      618**

Please note that on some evaluation forms not every question is answered.

### Resolution

Direct Result	276
Indirect	2
Unrelated	0
Partial	8
None	304
Other	28

**Process Rating** - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Appropriateness	4.1	3.8
Fairness	4.8	4.7
Participation	4.9	4.9
Confidentiality	4.9	4.9
Outcome	3.4	3.5
Would Participate Again	97%	95%

**Program Rating** - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Efficiency	4.8	4.6
Paperwork	4.7	4.6
Courtesy	4.9	4.8
Mandatory Participation	4.1	3.8

**Mediator Rating** - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Impartiality	5.0	5.0
Temperament	5.0	4.9
Knowledge of Process	5.0	5.0
Knowledge of Subject	4.9	4.9

### Effect of Mediation

# of Appellants Who Felt It -	Increased	Decreased	No Change
On Fees	70	90	100
On Costs	67	83	86
On Court Time	32	100	85

# of Appellees Who Felt It -	Increased	Decreased	No Change
On Fees	79	83	98
On Costs	63	80	101
On Court Time	21	108	92

## Party Evaluation Summary Report For Supreme Court Cases

**Total Evaluations 458**

Please note that on some evaluation forms not every question is answered.

### Resolution

Direct Result	197
Indirect	2
Unrelated	0
Partial	8
None	232
Other	19

### Process Rating - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Appropriateness	4.1	3.9
Fairness	4.6	4.7
Participation	4.8	4.7
Confidentiality	4.9	4.8
Outcome	3.3	3.3
Would Participate Again	82%	74%

### Program Rating - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Efficiency	4.7	4.6
Paperwork	4.7	4.6
Courtesy	4.8	4.8
Mandatory Participation	4.3	4.0

### Mediator Rating - On a scale of 1 (very dissatisfied) to 5(very satisfied)

	Appellant	Appellee
Impartiality	4.9	4.9
Temperament	4.9	4.9
Knowledge of Process	4.9	4.9
Knowledge of Subject	4.8	4.8

ATTACHMENT #1

IN THE SUPREME COURT OF ALABAMA  
July 17, 2003

ORDER

WHEREAS, this Court's Standing Committee on the Alabama Rules of Appellate Procedure recommended the adoption of a rule that allows mediation in cases at the appellate level; and

WHEREAS, this Court has considered the proposed rule;

NOW, THEREFORE, IT IS ORDERED that Rule 55, Alabama Rules of Appellate Procedure, be adopted to read in accordance with Appendix A attached to this order;

IT IS FURTHER ORDERED that a court comment to that rule be adopted to read in accordance with Appendix B attached to this order;

IT IS FURTHER ORDERED that the adoption of this rule and the comment shall be effective October 6, 2003;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 55:

"Note from the reporter of decisions: The order adopting Rule 55, effective October 6, 2003, is published in that volume of the Alabama Reporter that contains Alabama cases from \_\_\_ So. 2d."

Moore, C.J., and Houston, See, Lyons, Brown, Johnstone, Harwood, Woodall, and Stuart, JJ., concur.

## APPENDIX A

### RULE 55. APPELLATE MEDIATION

(a) Introduction. An appellate court may direct the attorneys for the parties and the parties to appear before an approved mediator, who may be designated by the Court.

(b) Attendance at sessions. Parties with full settlement authority and parties' counsel are required to attend mediation, unless excused from attendance by the mediator.

(c) Privileged discussions. The content of mediation discussions and proceedings, including any statements made or documents prepared by any party, attorney, mediator, or other participant, is privileged and shall not be construed for any purpose as an admission against interest.

(d) Confidentiality. Statements and comments made during mediation conferences and in related discussions are confidential and shall not be disclosed to the appellate court. Appellate mediators shall not be called as witnesses, and the information from the mediation, except for failure of a party or counsel to comply with this rule, shall not be disclosed to judges, staff, or employees of any court; provided, however, that it shall not be a violation of this subsection (d) to disclose to the appropriate person or entity such information as may be necessary to track the mediation and appeal process. The purposes of disclosing such information are to maintain status records and statistics, to ensure orderly compliance with this rule, and to provide a mechanism for returning the case to the ordinary appeal process where mediation has not resolved the case. Notwithstanding the foregoing, the bare fact that a settlement has or has not been reached as a result of mediation shall not be considered confidential.

(e) Mediation not binding. No party shall be bound by anything said or done at a mediation session unless a settlement is reached and the agreement is reduced to writing.

(f) Noncompliance. Failure to comply with this rule may result in the imposition of sanctions, including dismissal of the appeal.

APPENDIX B

Court Comment to Adoption of Rule 55  
Effective October 6, 2003

At the time of the adoption of this rule, the Supreme Court was considering the adoption of Appellate Mediation Rules to facilitate the mediation process; however, those rules had not yet been drafted. The intent of this rule is to permit and encourage mediation at the appellate level. The rule contemplates that statements and comments made during the mediation process shall be privileged and confidential, but it recognizes that it may be necessary to divulge certain information to the person appointed by the court to track the mediation, who may be an employee of the court. The Judges or Justices of the court in which the appeal is pending may be advised of whether the parties have reached a tentative agreement but need more time to reduce the agreement to writing, or whether the parties need more time to continue mediation, or whether the mediator has determined that additional time for mediation would not be productive. No other information about the mediation shall be conveyed to the Judges or Justices.

**ALABAMA RULES OF APPELLATE MEDIATION**

**RULE 1. OVERVIEW AND SCOPE OF APPELLATE MEDIATION PROGRAM**

**(a) Scope.** The appellate mediation program, established in the Supreme Court of Alabama and the Alabama Court of Civil Appeals pursuant to Rule 55 of the Alabama Rules of Appellate Procedure, provides an alternative means for resolving appeals in civil cases. The program is coordinated by an executive director, and operates, in each court, under the direct supervision of an appellate mediation administrator, an attorney employed by the respective court. The appellate mediation office shall be located in the judicial building in Montgomery, Alabama.

**(b) Goals.** To the extent resources are available, this program will provide the parties with a forum and process by which they can: (1) realistically consider the possibility of settlement of the entire case or issues in the case; (2) discuss limiting and simplifying the issues on appeal; (3) take actions that may reduce costs; and (4) aid the speedy and just resolution of any case.

[Adopted effective January 1, 2004; amended effective January 6, 2004; September 15, 2008.]

**Note from the reporter of decisions:** The order adopting the Alabama Appellate Mediation Rules, effective January 1, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 858 So.2d.

**Court Comment**

Time is of the essence to the program, and early scheduling is intended to give the parties the opportunity to settle a case before they incur the major expenses of having the clerk's record and the reporter's transcript prepared and of filing briefs.

**Note from the reporter of decisions:** The order amending the Alabama Rules of Appellate Mediation, effective January 6, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 862 So.2d.

**Note from the reporter of decisions:** The order amending Rule 1(a), Rule 2(f), Rule 4(h), Rules 5(f)(2), and Rule 6(b) and adopting the Court Comment to Amendment to Rule 6(b) Effective September 15, 2008, effective September 15, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from 994 So.2d.

## **RULE 2. SCREENING FOR MEDIATION**

**(a) Content of Forms.** Except as provided in Rule 2(e), no forms or notices filed with the appellate mediation office shall contain information relating to the parties' positions regarding settlement or any substantive matter that is the subject of the mediation; the exclusive and sole purposes of forms and notices to be filed in conjunction with the appellate mediation program are to maintain status records and statistics, to ensure orderly compliance with Rule 55, Ala. R. App. P., and to provide a mechanism for returning the case to the ordinary appeal process where mediation has not resolved the case.

**(b) Eligible Cases.** All civil matters within the jurisdiction of the Supreme Court of Alabama or the Alabama Court of Civil Appeals, where all parties are represented by counsel, shall be eligible for referral to the appellate mediation program.

**(c) Pre-screening of Cases.** Upon receipt of the docketing statement (Form 24 or 25, Appendix I, Alabama Rules of Appellate Procedure; see Rule 3(e), Alabama Rules of Appellate Procedure), the appellate mediation administrator shall determine whether a case should be sent to appellate mediation. If a case is chosen for mediation, the administrator will promptly furnish a Mediation Case-Screening Form and a Confidential Statement to Enter Mediation (Forms 2 and 3 to these Rules) to the parties.

**(1) Mediation Case-Screening Form.** The appellant and the appellee shall file a Mediation Case-Screening Form (Form 2 to these Rules), which provides information to supplement the docketing statement, in the court in which the case is pending within 14 days of the date shown on the Mediation Case-Screening Form. The appellant shall attach to the Mediation Case-Screening Form the following: (1) a copy of the docketing statement; (2) a copy of the complaint and any amendments to the complaint; (3) a copy of the order or judgment to be reviewed by the appellate court; (4) a copy of the order on any postjudgment motion, if applicable; and (5) a copy of the postjudgment motion if it will assist the administrator in determining the nature of the dispute.

**(2) Confidential Statement.** The appellant and the appellee shall return the Confidential Statement (Form 3 to these Rules) to the appellate mediation office within 14 days of the date shown on the Confidential Statement. The Confidential Statement, which gives a party the opportunity to request mediation, shall not be served on opposing counsel.

**(d) Notice to Clerk (and Court Reporter) to Stay Proceedings on Appeal.** When the Mediation Case-Screening Form and the Confidential Statement are sent to the parties, a Notice to Clerk (and Court Reporter) to Stay Proceedings on Appeal (Form 4 to these Rules), shall be sent to the trial court clerk and, if appropriate, the court reporter, staying the record preparation pending further orders of the court. The court reporter shall, however, notify the appellant of the estimated cost of the transcript within two weeks of the date on the Notice of Stay.

The appellate process, including the times for preparing the clerk's record and the reporter's transcript and for briefing, will be stayed until mediation is completed or terminated. If the mediation reaches an impasse, the case shall be ordered reinstated to the appellate docket and the stay of proceedings lifted.

**(e) Exceptions.** The confidential statement (Form 3) to be filed with the mediation office may contain information

relating to the parties' positions regarding settlement.

**(f) Filing of cross- or related appeal not stayed.** In a case in which the appellate process has been stayed pursuant to subdivision (d), the filing of a cross-appeal or any appeal related to the stayed case is not stayed.

[Adopted effective January 1, 2004; amended effective January 6, 2004; October 31, 2005; September 18, 2008.]

**Note from the reporter of decisions:** The order adopting the Alabama Appellate Mediation Rules, effective January 1, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 858 So.2d.

**Note from the reporter of decisions:** The order amending the Alabama Rules of Appellate Mediation, effective January 6, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 862 So.2d.

**Note from the reporter of decisions:** The order amending Rule 2(a), Rule 5(e), Rule 5(i), and Rule 8 and adopting Rule 2(e) and Rule 2(f) of the Alabama Rules of Appellate Mediation, effective October 31, 2005, is published in that volume of the Alabama Reporter that contains Alabama cases from 912 So.2d.

**Note from the reporter of decisions:** The order amending Rule 1(a), Rule 2(f), Rule 4(h), Rules 5(f)(2), and Rule 6(b) and adopting the Court Comment to Amendment to Rule 6(b) Effective September 15, 2008, effective September 15, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from 994 So.2d.

### **RULE 3. REFERRAL TO MEDIATION**

**(a) Referral to Mediation.** The appellate mediation administrator will review the Mediation Case-Screening Forms and the Confidential Statements completed by the parties. Selection of cases for mediation is based on the administrator's determination that the case should be referred to mediation after reviewing the facts, the order appealed

from, and the standard of review the appellate court will employ.

**(1) Order of Referral to Mediation.** The Order of Referral to Mediation (Form 5 to these Rules) notifies the parties that the case shall be mediated and instructs them to attempt to agree on a mediator.

**(2) Report on Status of Selection of Mediator.** The appellant shall file with the appellate mediation office the Report on Status of Selection of Mediator (Form 6 to these Rules), within 14 days of the date of the issuance of the Order of Referral to Mediation. The Report on the Status of Selection of Mediator advises the appellate mediation office of the result of efforts between parties to agree on the designation of a mediator. Before the parties submit the name of a mutually satisfactory mediator, the parties shall obtain the mediator's commitment to serve and make arrangements with regard to mediation fees. In the event the parties cannot agree on a mediator, the appellant shall promptly notify the appellate mediation office by filing the Report on Status of Selection of Mediator, and a mediator shall be selected by the appellate mediation administrator of the court in which the appeal is pending. (See Rule 4 for qualifications of a mediator.)

**(b) Appointment of Mediator.**

**(1) Order Appointing Mediator Pursuant to Stipulation of the Parties.** If parties agree on a mediator, the appellate mediation administrator will issue an Order Appointing Mediator Pursuant to Stipulation of the Parties (Form 7 to these Rules), which will be sent to the parties and the mediator.

**(2) Order Appointing Mediator Absent Stipulation of the Parties.** If the parties cannot agree upon a mediator within 14 days of the Report on Status of Selection of Mediator, the appellate mediation administrator shall appoint and serve upon the parties to the appeal and mediator an Order Appointing Mediator Absent Stipulation of the Parties (Form 8 to these Rules).

**(c) Referral by the Court.** If, in the opinion of the appellate court, a case is appropriate for mediation, the court may refer cases to the program at any time during the appellate process.

**(d) Mediation Time Frame.** Upon issuance of the Order of Referral to Mediation, the parties and the mediator shall have 63 days within which to complete the mediation. Within seven days of the completion of the mediation, the mediator shall file with the appellate mediation office a Mediator's Report (Form 13 to these Rules) and evaluations (Forms 14, 15, and 16 to these Rules).

[Adopted effective January 1, 2004; amended effective January 6, 2004.]

**Note from the reporter of decisions:** The order adopting the Alabama Appellate Mediation Rules, effective January 1, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 858 So.2d.

**Note from the reporter of decisions:** The order amending the Alabama Rules of Appellate Mediation, effective January 6, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 862 So.2d.

#### **RULE 4. APPELLATE MEDIATOR**

**(a) Qualifications of Mediator.** Before a person can be accepted as an appellate mediator, he or she must submit a Mediator Application (Form 1) to the appellate mediation office and meet the following criteria.

**(1) Appellate Mediator Roster.** The appellate mediation office shall maintain a roster of approved appellate mediators. An approved appellate mediator is someone who:

**A.** Is a former justice or judge of an appellate court of this State in good standing with the Alabama State Bar and

1. Has indicated his or her desire to be appointed as

a mediator for purposes of these Rules by completing and submitting to the appellate mediation office an application (Form 1 to these Rules) to serve as mediator for the appellate mediation program;

2. Is on the Alabama State Court Mediation Roster;
3. Has agreed to serve as a mediator pro bono pursuant to Rule 4(h);
4. Has agreed to adhere to the Alabama Code of Ethics for Mediators;
5. Has agreed to be bound by these Alabama Rules of Appellate Mediation; and
6. Has agreed to waive any and all claims against the appellate court in connection with his or her mediation of any court-referred dispute; or

**B.** Is an attorney in good standing with the Alabama State Bar and

1. Has indicated his or her desire to be appointed as a mediator for purposes of these Rules by completing and submitting to the appellate mediation office an application (Form 1 to these Rules) to serve as mediator for the appellate mediation program;
2. Has successfully completed the six-hour appellate mediation course approved by the appellate mediation office;
3. Is on the Alabama State Court Mediation Roster;
4. Has agreed to serve as a mediator pro bono pursuant to Rule 4(h);
5. Has agreed to adhere to the Alabama Code of Ethics for Mediators;
6. Has agreed to be bound by these Alabama Rules of Appellate Mediation; and
7. Has agreed to waive any and all claims against the appellate court in connection with his or her mediation of any court-referred dispute.

**(2) Nonroster Mediator.** Nothing in these Rules prevents the parties from choosing their own mediator, so long as the proposed mediator:

**A.** Is in good standing with the licensing board for the profession in which the person practices or, if the

profession is not licensed, has three written recommendations. The appellant shall attach documentation showing these qualifications to the Report on Status of Selection of Mediator Form within 14 days from the date of the issuance of the Order of Referral to Mediation;

**B.** Has agreed to adhere to the Alabama Code of Ethics for Mediators;

**C.** Has agreed to be bound by these Alabama Appellate Mediation Rules; and

**D.** Has agreed to waive any and all claims against the appellate court in connection with his or her mediation of any court-referred dispute.

**(b) Duty of Mediator Before Accepting Appointment.** Before accepting an appellate case for mediation, a mediator must make all disclosures to the parties required by the Alabama Code of Ethics for Mediators, Standard 5, subsection (b). If, upon receipt of such disclosure, it is determined that the mediator is unable to serve, the parties may, within seven days, name a different person, who has the requisite qualifications as a mediator (see Rule 4(a)). If the parties cannot agree on a mediator within the seven-day period, the appellate mediation administrator shall appoint a mediator.

**(c) Inability of Mediator to Serve.** If, once a mediator has accepted an appellate case for mediation, the mediator becomes unwilling or unable to serve, the mediator shall immediately notify the appellate mediation office. Within seven days of such notice, the parties may name a different person, who has the requisite qualifications, as an appellate mediator (see Rule 4(a)). If, within that seven-day period, the parties cannot agree on a mediator, the appellate mediation administrator shall appoint a mediator.

**(d) Authority of Mediator.** The mediator shall attempt to help the parties reach a satisfactory resolution of their dispute; the mediator does not have the authority to impose a settlement upon the parties. The mediator is authorized to conduct joint and separate meetings with the parties and to communicate offers between the parties as the parties

authorize. The mediator is authorized to end the mediation when, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

**(e) Ethics.** Mediators shall adhere to the rules of conduct for mediators as stated in the Alabama Code of Ethics for Mediators.

**(f) Fees and Expenses.** The parties shall mutually agree on the fees of the mediator selected by them. If a mediator is appointed, the mediator's fee and incidental expenses shall be shared equally between the parties, unless otherwise determined by the final mediation agreement. The mediator may require an advance deposit covering the estimated cost of mediation, but in any event, arrangements for payment of the cost of mediation and incidental expenses must be coordinated directly with the mediator. Attorneys for each party shall see to prompt payment of the fees and expenses. If satisfactory arrangements for compensation cannot be made, then the parties shall so advise the appellate mediation office, and the appellate mediation administrator will name another mediator.

**(g) Billings to Parties.** The mediator shall bill the parties based upon the rates and terms agreed to by the mediator and parties. It is not necessary to send copies of fee agreements or billings to the appellate mediation office. The parties are solely responsible for any billings by the mediator.

It is highly recommended that the private mediator fully disclose and explain to the parties the basis of compensation, fees, and charges to the parties in advance of the mediation and that the fee arrangement be memorialized in a written contract. Such disclosures and explanations usually include:

- (1) The basis for and amount of any charges for services to be rendered, including minimum fees and travel time;
- (2) The amount charged for the postponement or cancellation of mediation sessions and the circumstances under which such charges will be assessed or waived;
- (3) The basis and amount of charges for any other items; and

(4) The parties' pro rata share of mediation fees and costs if the parties have previously agreed to share those fees and costs.

Neither the appellate court nor the appellate mediation office will aid in the enforcement of the terms and conditions of the contract, including the collection of any outstanding fees, costs, and expenses.

**(h) Pro Bono Mediators.** Upon request from the court, all appellate mediators must mediate two cases each year for which they will not be paid.

(1) The Motion for Waiver of Mediator Fees. Any party may file a motion for a waiver of mediator fees (Form 9 to these Rules) before a mediator is appointed to mediate the party's case. The motion for waiver of mediation fees must be accompanied by an affidavit in support of a motion for appointment of pro bono mediator (see Form 9A, Alabama Forms of Appellate Mediation). Only valid reasons for the waiver of mediation fees, such as undue financial hardship, will be considered.

(2) Order Appointing Pro Bono Mediator. All pro bono appointments shall be so indicated in the Order Appointing Pro Bono Mediator (Form 10 to these Rules).

**(i) Disqualification of an Appellate Mediator.** An appellate mediator may be disqualified from mediating appellate cases pending in the Supreme Court of Alabama and the Alabama Court of Civil Appeals for:

(1) Violating Rule 55, Ala. R. App. P., the Alabama Appellate Mediation Rules, or the Alabama Code of Ethics for Mediators;

(2) Failure to remain in good standing and abide by the standards of practice established by the Alabama State Bar or the Alabama Center for Dispute Resolution, or, if the mediator is a nonroster mediator, failure to remain in good standing with the licensing board for the profession in which the person practices; or

(3) At the discretion of the Court.

[Adopted effective January 1, 2004; amended effective January 6, 2004; January 27, 2005; September 15, 2008.]

**Note from the reporter of decisions:** The order adopting the Alabama Appellate Mediation Rules, effective January 1, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 858 So.2d.

**Note from the reporter of decisions:** The order amending the Alabama Rules of Appellate Mediation, effective January 6, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 862 So.2d.

**Note from the reporter of decisions:** The order amending Rule 4(a)(1), Alabama Rules of Appellate Mediation, effective January 27, 2005, is published in that volume of Alabama Reporter that contains Alabama cases from 890 So.2d.

**Note from the reporter of decisions:** The order amending Rule 1(a), Rule 2(f), Rule 4(h), Rules 5(f)(2), and Rule 6(b) and adopting the Court Comment to Amendment to Rule 6(b) Effective September 15, 2008, effective September 15, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from 994 So.2d.

## **RULE 5. MEDIATION PROCEDURES**

**(a) Time and Place of Mediation.** The mediator shall fix the time and place of any mediation session at a location that is conducive to discussion and that provides security so as to maintain confidentiality. The mediation should be conducted in a manner appropriate to the dignity of the court.

**(b) Rescheduling Mediation.** Any requests to reschedule the mediation within the 63-day time frame are to be made directly to the mediator, not to the appellate mediation office.

**(c) Additional Mediation Sessions.** If a settlement is not

reached at the initial mediation session, but the mediator believes further mediation sessions or discussion would be productive, the mediator may conduct additional mediation sessions in person or telephonically within the 63 days allowed by these Rules for mediation. If the mediation is not completed within 63 days of the Order of Referral to Mediation, mediation shall be deemed to be at an impasse, unless an extension has been granted pursuant to subsection (e) of this rule.

**(d) No Record.** There shall be no record made of the mediation proceeding.

**(e) Extensions.** A mediator may request an extension of time beyond the 63-day period allowed by Rule 3(d) if he or she is of the opinion that the additional time for mediation would be productive. The request for an extension must be made in writing or telephonically to the appellate mediation administrator within the time allowed for mediation. The mediator must send a confirmation letter to the appellate mediation office, copied to all counsel. That letter should read as follows:

"Re: [Appeal number and style]. This confirms that to facilitate settlement the appellate mediation administrator has granted my request to extend the time to mediate this appeal from the current due date of [date] to the new due date of [date]."

**(f) Attendance at Mediation Session.** Mediation by telephone conferencing may be used if permitted by the mediator. A party is deemed to appear at a mediation session if the following persons are physically present or, if the mediator so authorizes, are reasonably available to authorize settlement during the mediation session:

- (1)** The party or its representative having full authority to settle without further consultation.
- (2)** The party's counsel of record.
- (3)** A representative of the insurance carrier for any

insured party who is not such carrier's outside counsel and who has full authority to settle up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.

As to a governmental or other entity for which settlement decisions must be made collectively, the availability or presence requirement may be satisfied by a representative authorized to negotiate on behalf of that entity and to make recommendations to it concerning settlement.

The failure of a party, and/or the party's counsel, to attend the mediation session may be grounds for sanctions against the party, the party's counsel, or both, to be imposed by the appellate court in which the case is pending. (See subsection (i) of this Rule.)

**(g) Submission of Mediation Statement and Documents.** The mediator may require the parties to prepare and submit a Mediation Statement. If a Mediation Statement is required, the Mediation Statement should include:

- (1) a brief recitation of the facts established to the satisfaction of the fact-finder;
- (2) the history of any efforts to settle the case, including any offers or demands and previous mediations;
- (3) a statement of the issue or issues on appeal and the manner in which each issue was preserved;
- (4) a statement of the standard of review applicable to each issue;
- (5) a summary of the parties' legal positions and a candid assessment of the respective strengths and weaknesses of those positions;
- (6) the present posture of the appeal, including any matters pending in the trial court or in any related litigation;

(7) any recent developments that may impact the resolution of the appeal;

(8) identification of the individual or individuals and counsel the parties believe should be directly involved in the settlement discussions;

(9) a description of any sensitive issues that may not be apparent from the court records, but that may or will influence the settlement negotiations;

(10) the nature and extent of the relationship between the parties or their counsel;

(11) the parties' priority of interests;

(12) any suggested approach for the mediator to take in an attempt to settle the appeal (e.g., "problem" to be settled, sequence of issues);

(13) any suggested creative solutions;

(14) necessary terms in any settlement;

(15) any particular concerns about confidentiality;

(16) any limitations in counsel's authority to make commitments on behalf of the client; and

(17) any additional information that the counsel's client or the other party needs to settle the case and whether it should be provided before the mediation.

Mediation Statements are confidential. (See Rule 8 to these Rules.) Copies of the Mediation Statements submitted by the parties should go directly to the mediator and should not be served upon opposing counsel. Documents prepared for mediation sessions are not to be filed with the appellate mediation office or with the clerk's office of the appellate court in which the case is pending and are not to be part of the record on appeal.

**(h) Conduct of Mediation.** Although the mediation sessions are

relatively informal, they are proceedings of the court and shall be conducted with that spirit in mind. The mediation process is nonbinding, so no settlement is reached unless all parties agree.

The mediator should begin the mediation by describing the mediation process, discussing confidentiality, and inquiring whether any procedural questions or problems can be resolved by agreement. The parties and the mediator may then discuss, either jointly or separately, and in no particular order, the following topics:

- (1) The legal issues and the appellate court's decision-making process regarding these issues (e.g., preservation of error, waiver, standards of review, etc.);
- (2) The history of any efforts to settle the case;
- (3) the parties' underlying interests, preferences, motivations, assumptions, and new information or other changes that may have occurred;
- (4) future events based upon the various outcome alternatives of the appeal;
- (5) how resolution of the appeal impacts the underlying problem;
- (6) cost-benefit and time considerations; and
- (7) any procedural alternatives possibly applicable to the appeal (e.g., vacatur, remand, etc.).

The discussion is not limited to these topics and, because each appeal has its own circumstances, will vary considerably. The mediator will also attempt to generate offers and counteroffers and may have several follow-up mediation sessions by telephone or in person until the appeal is settled or it is determined that it will not settle.

Because appellate mediation is based on the principles of self-determination by the parties and the impartiality of the mediator, the mediator may apply the facilitative model of mediatic

**(i) Sanctions.** Neither the appellate mediation office nor the appellate mediation administrator has the authority to impose sanctions. If, however, a party refuses to attend a mediation session or sessions, unreasonably delays the scheduling of mediation, or otherwise unreasonably impedes the conduct of the program, the court may reinstate the case to the appellate docket, and the court may impose sanctions. Sanctions may include, but are not limited to, assessing reasonable expenses caused by the failure of the mediation, including an award of mediator and/or attorney fees; assessing all or a portion of the appellate costs; dismissal of the appeal; or taking such other appropriate action as the circumstances may warrant. No motion for sanctions by litigants or recommendation for sanction by the mediation office will be presented to the appellate court until after the court has decided the case on the merits.

[Adopted effective January 1, 2004; amended effective January 6, 2004; October 31, 2005; September 15, 2008.]

**Note from the reporter of decisions:** The order adopting the Alabama Appellate Mediation Rules, effective January 1, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 858 So.2d.

#### **Court Comment**

One of the goals of the appellate mediation program is to help the parties save costs in preparing the record and briefs. It is not the aim of the appellate mediation program to have parties submit a brief as a Mediation Statement.

**Note from the reporter of decisions:** The order amending the Alabama Rules of Appellate Mediation, effective January 6, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 862 So.2d.

**Note from the reporter of decisions:** The order amending Rule 2(a), Rule 5(e), Rule 5(i), and Rule 8 and adopting Rule 2(e) and Rule 2(f) of the Alabama Rules of Appellate Mediation, effective October 31, 2005, is published in that volume of the Alabama Reporter that contains Alabama cases from 912 So.2d.

**Note from the reporter of decisions:** The order amending Rule 1(a), Rule 2(f), Rule 4(h), Rules 5(f)(2), and Rule 6(b) and adopting the Court Comment to Amendment to Rule 6(b) Effective September 15, 2008, effective September 15, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from 994 So.2d.

## **RULE 6. COMPLETION OF MEDIATION PROCESS**

**(a) Mediator's Report.** Within seven days of the completion of the mediation, the mediator shall file with the appellate mediation office a Mediator's Report (Form 13 to these Rules). Upon the filing of the Mediator's Report or the expiration of the time allowed for mediation, whichever occurs first, all appellate time requirements shall resume.

**(1) No Agreement.** If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall so indicate in the Mediator's Report, without comment or recommendation.

**(2) Agreement.** If a partial or final agreement is reached, the mediator shall indicate the fact in the Mediator's Report. Such report shall be signed by all parties and their attorneys.

**A.** In those cases where a partial agreement is reached, the case will be reinstated on the appellate docket for appellate determination of the remaining issues and the stay of proceedings lifted. All appellate time requirements shall resume.

**B.** Where the mediation results in resolution of the appeal, dismissal of the appeal will be governed by Rule 42, Alabama Rules of Appellate Procedure. (See Rule 7 of these Rules.)

**(b) Evaluations.** At the conclusion of all mediation proceedings in which the mediation office requests evaluations, the mediator shall distribute evaluations to the

counsel and parties of record inviting their candid responses about the effectiveness of the appellate mediation program in assisting the parties to resolve their issues on appeal.

The mediator shall distribute evaluations (Forms 14, 15, and 16 to these Rules) at the mediation session and the attorney and parties shall be informed that completion of the evaluations is essential to the program. Evaluations are to be completed by the mediator, the attorneys, and the parties. Counsel and parties are to return evaluations in a sealed envelope to the mediator. The mediator shall return the completed evaluations with the Mediator's Report to the appellate mediation office within seven days of completion of mediation.

[Adopted effective January 1, 2004; amended effective January 6, 2004; September 15, 2008.]

**Note from the reporter of decisions:** The order adopting the Alabama Appellate Mediation Rules, effective January 1, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 858 So.2d.

**Note from the reporter of decisions:** The order amending the Alabama Rules of Appellate Mediation, effective January 6, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 862 So.2d.

**Court Comment to Amendment to Rule 6(b)  
Effective September 15, 2008**

The evaluations have proven helpful in making the appellate mediation program user friendly. The appellate mediation office suggests reducing the number of cases in which evaluations are to be filed from every case sent to an appellate mediator to only the first five cases of any mediator. Thereafter, evaluations will not be required except at the request of the mediation office.

**Note from the reporter of decisions:** The order amending Rule 1(a), Rule 2(f), Rule 4(h), Rules 5(f)(2), and Rule 6(b) and adopting the Court Comment to Amendment to Rule 6(b) Effective September 15, 2008, effective September 15, 2008, is published

in that volume of Alabama Reporter that contains Alabama cases from 994 So.2d.

## **RULE 7. POST-SETTLEMENT DISMISSAL PROCEDURES**

**(a) Joint Stipulation for Dismissal of Case After Mediation (Form 11 to these Rules).** If the parties reach an agreement as a result of the mediation, they may file a joint (or agreed) motion to dismiss the case pursuant to Rule 42, Alabama Rules of Appellate Procedure, in the clerk's office of the appellate court in which the case is pending. A copy of the order to dismiss the case shall be served on the mediator. The motion to dismiss should address the following:

- (1) Whether the dismissal pertains to all parties and claims on appeal;
- (2) Whether the case should be remanded to the trial court for further proceedings in conformance with the parties' settlement agreement; and
- (3) Whether the parties are to bear their own costs or whether, pursuant to the parties' agreement, the costs are to be otherwise apportioned.

**(b) Termination of Mediation and Notice to Reinstate Appeal (Form 12 to these Rules).** The mediator may terminate the mediation process at any time, if, in the opinion of the mediator, further attempts at mediation will serve no useful purpose.

- (1) Once mediation has been terminated without the parties' reaching an agreement, the appeal will be reinstated on the appellate docket and the stay of proceedings lifted to reinstate the appeal and the clerk of the appellate court shall send the Notice to Reinstate Appeal (Form 12 to these Rules) to the parties.
- (2) ALL APPELLATE TIME REQUIREMENTS SHALL RESUME. The appellant shall make satisfactory arrangements with trial court clerk and court reporter for preparation of the

record on appeal within seven days of the date of the Notice to Reinstate Appeal.

[Adopted effective January 1, 2004; amended effective January 6, 2004.]

**Note from the reporter of decisions:** The order adopting the Alabama Appellate Mediation Rules, effective January 1, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 858 So.2d.

**Note from the reporter of decisions:** The order amending the Alabama Rules of Appellate Mediation, effective January 6, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 862 So.2d.

#### **RULE 8. CONFIDENTIALITY**

Except as otherwise required by law, the appellate mediation program operates under the rules of confidentiality as provided below.

All information disclosed in the course of screening for mediation, referral to mediation, and mediation, including oral, documentary, or electronic information, shall be deemed confidential and shall not be divulged by anyone involved in the mediation program or in attendance at the mediation except as permitted under this Rule, by statute, or by the Alabama Rules of Appellate Procedure.

There shall be no reference, whatsoever, in any appellate motions, briefs, or argument to the appellate mediation program or to the fact that the appeal was mediated or that mediation reached an impasse, except in those cases where mediation was partially successful and disclosure is necessary for a complete statement of the case. It is the responsibility of the counsel to bring this exception to the rules to the attention of the clerk's office or the mediation office. Failure to do so may result in a waiver of this exception.

The mediator and mediation program employees shall not be

compelled in any adversary proceeding or judicial forum to divulge the contents of any documents revealed during mediation or the fact that such documents exist or to testify in regard to the mediation. The mediator's notes and the parties' Mediation Statements do not become part of the court's file.

The phrase, "information disclosed in the course of screening for mediation, referral to mediation, and mediation," as used in this Rule, shall include, but not be limited to: (1) views expressed or suggestions made by another party with respect to a possible settlement of the dispute; (2) admissions made by another party in the course of the mediation proceedings; (3) proposals made or views expressed by the mediator; (4) the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator; and (5) all records, reports, or other documents received by a mediator while serving as mediator.

The confidentiality rule applies in all mediated cases conducted by an appellate mediator. The court strictly enforces this Rule.

[Former Rule 7 adopted effective January 1, 2004; renumbered as Rule 8 and amended effective January 6, 2004; amended effective October 31, 2005.]

**Note from the reporter of decisions:** The order adopting the Alabama Appellate Mediation Rules, effective January 1, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 858 So.2d.

**Note from the reporter of decisions:** The order amending the Alabama Rules of Appellate Mediation, effective January 6, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 862 So.2d.

**Note from the reporter of decisions:** The order amending Rule 2(a), Rule 5(e), Rule 5(i), and Rule 8 and adopting Rule 2(e) and Rule 2(f) of the Alabama Rules of Appellate Mediation, effective October 31, 2005, is published in that volume of the Alabama Reporter that contains Alabama cases from 912 So. 2d.

## **RULE 9. GENERAL**

**(a) Service.** All documents filed with the appellate mediation office shall be served on opposing counsel, except as otherwise indicated by these Rules.

**(b) Questions or Complaints.** A party's or counsel's complaints or concerns regarding the appellate mediator or the conduct of the mediation should be addressed to the appellate mediation administrator of the court in which the appeal is pending. Questions and complaints shall not be addressed to the Supreme Court of Alabama, the Alabama Court of Civil Appeals, or the clerk's staff of the respective courts, unless the party, counsel, or appellate mediator is directed to do so by the appellate mediation office.

**(c) Applicability.** \* These Rules govern the procedure for all matters in appellate mediation. If no procedure is specifically provided in these Rules or by statute, the Alabama Civil Court Mediation Rules shall be applicable to the extent not inconsistent herewith.

[Former Rule 8 adopted effective January 1, 2004; renumbered as Rule 9 and amended effective January 6, 2004.]

\* Suggested title added by Publisher.

**Note from the reporter of decisions:** The order adopting the Alabama Appellate Mediation Rules, effective January 1, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 858 So.2d.

**Note from the reporter of decisions:** The order amending the Alabama Rules of Appellate Mediation, effective January 6, 2004, is published in that volume of the Alabama Reporter that contains Alabama cases from 862 So.2d.

(Form 1)  
Appellate Mediation Program  
Mediator Application  
PLEASE PRINT OR TYPE APPLICATION

Name: \_\_\_\_\_ Firm or Agency: \_\_\_\_\_  
Street or P.O. Box: \_\_\_\_\_ City/Town: \_\_\_\_\_  
County: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax No: \_\_\_\_\_  
E-mail: \_\_\_\_\_ State Bar No: \_\_\_\_\_

---

1. Have you completed the Alabama appellate mediation training? If so, please attach a copy of your certificate.
  
2. List the types of mediation training in which you are registered and the dates you received the training.
  
3. Describe the subject matter of disputes, if any, for which you have been a mediator in the past five years, with the dates. Do not give the names of the parties. State whether you were a sole mediator or a co-mediator.
  
4. State the name of any organization for which you have provided mediation services during the past five years.
  
5. Check your areas of substantive expertise:

<input type="checkbox"/> Administrative agencies	<input type="checkbox"/> Employment/Labor	<input type="checkbox"/> Personal injury
<input type="checkbox"/> Arbitration	<input type="checkbox"/> Environment	<input type="checkbox"/> Probate
<input type="checkbox"/> Attorney fees	<input type="checkbox"/> Family law	<input type="checkbox"/> Products liability
<input type="checkbox"/> Business/Contract	<input type="checkbox"/> Health care	<input type="checkbox"/> Professional negligence
<input type="checkbox"/> Construction	<input type="checkbox"/> Housing	<input type="checkbox"/> Public entity
<input type="checkbox"/> Corporate	<input type="checkbox"/> Insurance	<input type="checkbox"/> Real property
<input type="checkbox"/> Defamation	<input type="checkbox"/> Intellectual property	<input type="checkbox"/> Securities
<input type="checkbox"/> Domestic violence	<input type="checkbox"/> Landlord/Tenant	<input type="checkbox"/> Workers' compensation
<input type="checkbox"/> Eminent domain	<input type="checkbox"/> Medical malpractice	<input type="checkbox"/> Wrongful death

Other (specify): \_\_\_\_\_  
\_\_\_\_\_

6. What is your fee for mediation?

7. How many years have you been in active practice? If none, please explain.
8. What is or was the nature of your practice?
9. Are you certified in any speciality? If so, please list.
10. What percentage of your practice has been representing plaintiffs? \_\_\_\_\_ defendants? \_\_\_\_\_
11. Describe your appellate experience.
12. Have you mediated an appellate case? Please state when, where, and the type of case mediated.
13. Is your mediation style facilitative or evaluative? Please explain.
14. Please state any restrictions on your ability to travel throughout the State of Alabama.
15. Would you be willing to conduct a mediation by telephone conference if necessary?  
\_\_\_\_\_ Yes \_\_\_\_\_ No
16. List any languages, other than English, in which you can conduct a mediation.

Please read and sign the following agreement:

- *I agree to be bound by the Alabama Supreme Court's Appellate Mediation Rules.*
- *I agree to waive any and all claims against the appellate court in connection with my mediation of any court-referred dispute.*
- *I agree to mediate pro bono two cases each year.*
- *I agree to adhere to the Alabama Code of Ethics for Mediators.*

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Mail this application to:      Appellate Mediation Office  
Alabama Supreme Court  
300 Dexter Avenue  
Montgomery, Alabama 36104

(Form 2)

IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

**MEDIATION CASE-SCREENING FORM**

This screening form is sent to obtain information to be used by the appellate mediation administrator in determining whether this case is an appropriate one for appellate mediation. **Each party must file a copy of the completed Mediation Case-Screening Form and the Confidential Statement to Enter Appellate Mediation with the Appellate Mediation Office, 300 Dexter Avenue, Montgomery, Alabama 36104, within 14 days of the date of this notice, and serve a copy of the completed Mediation Case-Screening Form on opposing counsel.**

In addition to the documents required in the first paragraph, the **appellant shall attach** (1) a copy of the docketing statement, (2) a copy of the complaint and any amendments to the complaint; (3) a copy of the order or judgment to be reviewed by the appellate court; (4) a copy of the order on any postjudgment motion, if applicable; and (5) a copy of the postjudgment motion if it will assist the administrator to determine the nature of the dispute.

**FAILURE TO RETURN THE MEDIATION CASE- SCREENING FORM  
MAY RESULT IN SANCTIONS (SEE RULE 5 (i)).**

*Please complete your portion of this form.*

Appellant's attorney

Alabama Bar No.

Address, City, State, Zip

Phone

Fax

E-mail

Appellee's attorney

Alabama Bar No.

Address, City, State, Zip

Phone

Fax

E-mail

**ISSUES ON APPEAL (to be completed by appellants/cross-appellants only):**

Are there any issues you expect to be raised on appeal that are not listed on the docketing statement? If so, please attach to this form a statement of those additional issues.

**IN FORMA PAUPERIS**

Were you granted leave to proceed in forma pauperis on appeal at the trial level? If so, attach a copy of the order granting such leave.

**MEDIATION**

Was the case mediated at the trial level?

Yes \_\_\_\_\_ No \_\_\_\_\_

Has the case been mediated since entry of the order appealed?

Yes \_\_\_\_\_ No \_\_\_\_\_

**THE APPELLANT IS TO ATTACH A COPY OF THE DOCKETING STATEMENT, A COPY OF THE COMPLAINT AND ANY AMENDMENTS TO THE COMPLAINT, A COPY OF THE ORDER OR JUDGMENT TO BE REVIEWED BY THE APPELLATE COURT, A COPY OF THE ORDER ON ANY POSTJUDGMENT MOTION, IF APPLICABLE, AND A COPY OF THE POSTJUDGMENT MOTION IF IT WILL ASSIST THE ADMINISTRATOR TO DETERMINE THE NATURE OF THE DISPUTE.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Lead counsel for: \_\_\_\_\_

F2 8/09

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the following:

Served by:

\_\_\_\_\_ U.S. Mail to their regular mailing addresses or by

\_\_\_\_\_ Email to their regular email addresses:

s/ \_\_\_\_\_  
Of Counsel

(Form 3)

IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

CONFIDENTIAL STATEMENT TO ENTER  
APPELLATE MEDIATION

NOT TO BE SERVED ON OPPOSING PARTY

I believe appellate mediation is (select one):

( ) appropriate

( ) inappropriate

for my appeal for the following reasons (please explain in detail):

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Counsel for: \_\_\_\_\_

**NOTE:** This form is to be filed with the Appellate Mediation Office, 300 Dexter Avenue, Montgomery, Alabama 36104, within 14 days from the date of this form, but it is not to be served on opposing counsel. Although requests to enter mediation are not automatically granted, the appellate mediation administrator will review this information to determine whether this appeal should be mediated.

F3 8/09

(Form 4)

IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

**NOTICE TO CLERK/COURT REPORTER TO  
STAY PROCEEDINGS ON APPEAL**

This is to notify you that this appeal may be selected for appellate mediation. It is, therefore, now on the appellate mediation docket.

The Appellate Mediation Office will be sending a Mediation Case-Screening Form to the parties. Preparation of the record and/or transcript is stayed pending further order of this Court. THE COURT REPORTER SHALL, HOWEVER, NOTIFY THE APPELLANT OF THE ESTIMATED COST OF PREPARING THE TRANSCRIPT.

THIS ORDER DOES NOT STAY THE FILING OF A CROSS-APPEAL OR THE FILING OF ANY RELATED APPEAL.

(Form 5)

IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

ORDER OF REFERRAL TO MEDIATION

The foregoing case, having been reviewed by the appellate mediation administrator, is hereby referred to appellate mediation.

ORDERED:

1. The above-styled case is referred to mediation. Within 14 days from the date of this order, **the appellant** shall advise the mediation office of the mediator chosen, using the enclosed Report on Status of Selection of Mediator form. The parties may agree on a mediator from the enclosed list of court-approved mediators to mediate this case, or they may agree on a mediator not on the list so long as that individual meets the qualifications set out in Rule 4 (a) (2) of the Alabama Appellate Mediation Rules. Please note that before a person can be accepted as an appellate mediator, he or she must submit a Mediator Application (Form 1) to the Appellate Mediation Office. It is the **appellant's** responsibility to obtain and submit a completed Mediator Application on all non-roster mediators to the Appellate Mediation Office. The Application and other forms can be found online at [www.judicial.state.al.us/mediation](http://www.judicial.state.al.us/mediation). The parties are required to contact the mediator before returning the Report on Status of Selection of Mediator form to determine if the mediator they have agreed upon can serve. Upon receipt of the Report on Status of Selection of Mediator form, the appellate mediation administrator will enter an order appointing that mediator for this case. If the parties are not able to agree on a mediator, the appellate mediation administrator will appoint a mediator for this case from the appellate court mediator roster. If a party believes that the payment of mediation fees will cause an undue financial hardship on that party, the party may file a motion for wavier of mediator's fees and an affidavit of hardship with the appellate mediation administrator.
2. When a mediator is contacted regarding mediation, the parties should begin scheduling for mediation time(s) that are within the 63 days of the date of this order as provided in Rule 3(d), Alabama Rules of Appellate Mediation.
3. The parties shall submit Mediation Statements if the mediator so requests. Parties with full settlement authority and counsel are required to attend mediation sessions. Mediation by telephone conferencing may be used if permitted by the mediator. See Rule 5 (f), Alabama Rules of Appellate Mediation. If a party refuses to attend a mediation session or sessions, unreasonably delays the scheduling

of mediation, or otherwise unreasonably impedes the conduct of the appellate mediation program, and the case is returned to the appellate docket as a result of those actions, the court may impose sanctions including, but not limited to, assessing reasonable expenses caused by the failure, including an award of mediator and/or attorney fees; assessing all or a portion of the appellate costs; dismissal of the appeal; or such other appropriate action as the circumstances may warrant.

4. Each party shall appear at the mediation session or sessions. A party is deemed to appear at a mediation session if the following persons are physically present:
  1. The party or its representative having full authority to settle without further consultation;
  2. The party's counsel of record; and
  3. A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.
5. Public entities shall be deemed to appear by the physical presence of a representative with full authority to negotiate and to recommend settlement to the public entity.
6. All appellate mediation sessions shall be confidential as provided in Rule 8 of the Alabama Appellate Mediation Rules, and the mediation will be conducted in accordance with the Alabama Appellate Mediation Rules, the Alabama Code of Ethics for Mediators, and Rule 55, Alabama Rules of Appellate Procedure.
7. The appellate process, including the times for preparing and transmitting the record and filing briefs in this case are stayed pending further order of this Court. THE TIME FOR FILING ANY CROSS APPEAL OR RELATED APPEAL IS NOT STAYED.
8. THE MEDIATION SHALL BE COMPLETED WITHIN 63 DAYS FROM THE DATE OF THIS ORDER.

\_\_\_\_\_  
Appellate Mediation Administrator

\_\_\_\_\_  
Date

cc: Counsel  
Mediator

Enclosures: Appellate Mediation Roster  
Report on Status of Selection of Mediator

(Form 6)  
IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

REPORT ON STATUS OF SELECTION OF MEDIATOR

I, \_\_\_\_\_, attorney for the appellant, have consulted with the attorney(s) for the appellee(s) and am advising the Appellate Mediation Office of the following:

1. \_\_\_\_\_ The parties have jointly selected the following person to serve as the mediator for this case:

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (Phone)

AND \_\_\_\_\_ I have confirmed with the mediator that he/she can and will mediate this dispute.

And, if applicable: \_\_\_\_\_ I have confirmed that the selected mediator will serve pro bono for the appellant/appellee.

OR

2. \_\_\_\_\_ The parties are unable to stipulate to the appointment of a mediator.

By signing this agreement, I confirm that the information provided to the Appellate Mediation Office is true.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Counsel for Appellant

cc: Mediator (if no. 1 above is checked)  
Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has been served on  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the following:

Served by:

\_\_\_\_\_ U.S. Mail to their regular mailing addresses or by

\_\_\_\_\_ Email to their regular email addresses:

s/ \_\_\_\_\_  
Of Counsel

**NOTE: This form is to be filed with the Appellate Mediation Office, by U.S. Mail to  
300 Dexter Avenue, Montgomery, Alabama 36104, or by email to  
mediation@appellate.state.al.us, within 14 days from the date of issuance of the  
Order of Referral to Mediation.**

(Form 7)

IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

Mediator

[Mediator Contact Info]

**ORDER APPOINTING MEDIATOR PURSUANT TO  
STIPULATION OF THE PARTIES**

The above-named mediator is hereby appointed as appellate mediator in this matter. Mediation shall be conducted in conformity with the Alabama Appellate Mediation Rules; Rule 55, Alabama Rules of Appellate Procedure; and the Alabama Code of Ethics for Mediators. Mediation shall be completed within 63 days from [DATE OF ORDER OF REFERRAL], the date of the issuance of the Order of Referral to Mediation.

The mediator shall be compensated at a rate to be agreed upon between the parties and the mediator, which compensation shall be shared equally between the parties unless otherwise determined by final mediation agreement. An advance deposit covering the estimated cost of mediation may be required by the mediator, but in any event arrangements for payment of the cost of mediation must be coordinated directly with the mediator.

ORDERED this [DATE].

---

Appellate Mediation Administrator

cc: Counsel  
Mediator, with enclosures

**NOTE: Mediation is to conclude within 63 days from the date of the issuance of the Order of Referral to Mediation. The mediator shall file with the Appellate Mediation Office, 300 Dexter Avenue, Montgomery, Alabama 36104, a mediator's report along with completed evaluations within seven days after the completion of mediation.**

F7 8/09

(Form 8)

IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

Mediator

[Mediator Contact Info]

**ORDER APPOINTING MEDIATOR ABSENT STIPULATION OF THE PARTIES**

The above-named mediator is hereby appointed as appellate mediator in this matter. Mediation shall be conducted in conformity with the Alabama Appellate Mediation Rules; Rule 55, Alabama Rules of Appellate Procedure; and the Alabama Code of Ethics for Mediators. Mediation shall be completed within 63 days from [DATE OF ORDER OF REFERRAL], the date of the issuance of the Order of Referral to Mediation.

The mediator shall be compensated at a rate to be agreed upon between the parties and the mediator, which compensation shall be shared equally between the parties unless otherwise determined by final mediation agreement. An advance deposit covering the estimated cost of mediation may be required by the mediator, but in any event arrangements for payment of the cost of mediation must be coordinated directly with the mediator.

**ORDERED this [DATE].**

\_\_\_\_\_  
Appellate Mediation Administrator

cc: Counsel  
Mediator, with enclosures

**NOTE: Mediation is to conclude within 63 days from the date of issuance of the Order of Referral to Mediation. The mediator shall file with the Appellate Mediation Office, 300 Dexter Avenue, Montgomery, Alabama 36104, a mediator's report along with completed evaluations within seven days after the completion of mediation.**

(Form 9)

IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

MOTION FOR WAIVER OF MEDIATOR'S FEES

\_\_\_\_\_, through undersigned counsel, hereby moves for a waiver of the mediator's fees and, as grounds therefor, would state that this party has been granted leave to appeal in forma pauperis. (See attached order from the trial court or the appellate court.)

\_\_\_\_\_  
Appellant/Appellee

\_\_\_\_\_  
Counsel for: \_\_\_\_\_

\_\_\_\_\_  
Date

**NOTE: Signatures by both the party and counsel are required. This form is to be filed with the Appellate Mediation Office, 300 Dexter Avenue, Montgomery, Alabama 36014, within 14 days after the issuance of the Order of Referral to Mediation, AND BEFORE THE REPORT ON STATUS OF SELECTION OF MEDIATOR HAS BEEN FILED WITH THE APPELLATE MEDIATION OFFICE.**

F9 8/09



Affidavit in Support of Motion for Appointment of Pro Bono Mediator

MONTHLY EXPENSES

A. Living expenses: \$ \_\_\_\_\_  
 Rent/mortgage: \_\_\_\_\_  
 Total utilities (electricity, gas, water, etc.): \_\_\_\_\_  
 Food: \_\_\_\_\_  
 Clothing: \_\_\_\_\_  
 Health care/medical: \_\_\_\_\_  
 Insurance: \_\_\_\_\_  
 Car payment(s)/transportation expenses: \_\_\_\_\_  
 Loan payments: \_\_\_\_\_  
 Credit card payments: \_\_\_\_\_  
 Educational/employment expenses: \_\_\_\_\_  
 Other expenses (be specific): \_\_\_\_\_

SUBTOTAL A. \$ \_\_\_\_\_

B. Child support payment(s)/alimony: \$ \_\_\_\_\_

SUBTOTAL B. \$ \_\_\_\_\_

C. Exceptional expenses: \$ \_\_\_\_\_

SUBTOTAL C. \$ \_\_\_\_\_

TOTAL MONTHLY EXPENSES (add subtotals from A and B only) A + B = T. \$ \_\_\_\_\_

TOTAL MONTHLY GROSS INCOME I. \$ \_\_\_\_\_  
 LESS TOTAL MONTHLY EXPENSES - T. \$ \_\_\_\_\_  
 DISPOSABLE MONTHLY INCOME \$ \_\_\_\_\_

LIQUID ASSETS:

Cash on hand/bank (or otherwise available such as stocks, bonds, certificates of deposit): \$ \_\_\_\_\_  
 Equity in real estate (value of property, less what you owe): \_\_\_\_\_  
 Equity in personal property (such as value of motor vehicles, jewelry, tools, guns, furnishings, electronic equipment, less what you owe): \_\_\_\_\_  
 Other (be specific): \_\_\_\_\_  
 Do you own anything else of value?  Yes  No  
 (Land, house, boat, etc.): \_\_\_\_\_  
 If so, please describe: \_\_\_\_\_

TOTAL LIQUID ASSETS \$ \_\_\_\_\_

AFFIDAVIT/REQUEST

I swear or affirm that the answers are true and reflect my current financial status. I understand that a false statement or answer to any question in this Affidavit may subject me to the penalties of perjury. I authorize the court or its authorized representative to obtain records and information pertaining to my financial status from any source in order to verify information provided by me.

\_\_\_\_\_  
Affiant's signature

\_\_\_\_\_  
Print or type name

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge/Clerk/Notary

(Form 10)

IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

Mediator

[MEDIATOR CONTACT INFO]

**ORDER APPOINTING PRO BONO MEDIATOR**

The above-named mediator is hereby appointed as a mediator in this matter. Mediation shall be conducted in conformity with the Alabama Rules of Appellate Mediation; Rule 55, Alabama Rules of Appellate Procedure; and the Alabama Code of Ethics for Mediators. The Motion of Waiver of Mediator's Fees filed by the appellant/appellee, \_\_\_\_\_, is granted. The mediator's fees shall be waived for appellant/appellee only. Counsel and mediator shall adjust the fees charged accordingly. Mediation shall be completed within 63 days from [DATE OF REFERRAL TO MEDIATION], the date of the issuance of the Order of Referral to Mediation.

**ORDERED this [DATE].**

\_\_\_\_\_  
Appellate Mediation Administrator

cc: Counsel  
Mediator, with enclosures

**NOTE: Mediation is to conclude within 63 days from the date of issuance of the Order of Referral to Mediation. The mediator shall file with the Appellate Mediation Office, 300 Dexter Avenue, Montgomery, Alabama 36104, a mediator's report along with completed evaluations within seven days after the completion of mediation.**

F10 8/09

(Form 11)

IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

JOINT MOTION FOR DISMISSAL OF APPEAL AFTER MEDIATION

Appellant, \_\_\_\_\_, and appellee,  
\_\_\_\_\_, pursuant to Rule 42, Alabama

Rules of Appellate Procedure, hereby file this joint motion for dismissal.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Counsel for appellant

\_\_\_\_\_  
Counsel for appellee

cc: Appellate Mediation Office  
Mediator

NOTE: This form is to be filed with the appellate court clerk's office, 300 Dexter Avenue, Montgomery, Alabama 36104, within seven days after the completion of mediation.

F11 8/09

(Form 12)

IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

NOTICE TO REINSTATE APPEAL

This is to notify you that this appeal is hereby reinstated on the appellate docket. The stay formerly imposed in the appellate proceedings is lifted. All appellate time requirements shall resume. The appellant shall make satisfactory arrangements with the trial court clerk and the court reporter for preparation of the record on appeal within seven days of this date. Failure to comply in this may result in dismissal of this appeal.

DATED this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

\_\_\_\_\_  
Clerk of the Supreme Court of Alabama or Alabama  
Court of Civil Appeals

cc: Counsel  
Clerk  
Court reporter

F12 8/09

(Form 13)

IN THE SUPREME COURT OF ALABAMA  
OR  
ALABAMA COURT OF CIVIL APPEALS

DATE

[INSERT CASE # AND STYLE]

MEDIATOR'S REPORT

In accordance with the Court's mediation order, mediation occurred on the following date(s) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The results of that mediation are indicated below:

1. \_\_\_\_\_ The parties reached an agreement that disposes of all issues and all claims. A motion to dismiss will be filed with the clerk of the court.
2. \_\_\_\_\_ A partial agreement was reached. The appeal will continue as to the remaining claims.
3. \_\_\_\_\_ An impasse as to all issues.
4. \_\_\_\_\_ Other. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Completed evaluations by the mediator, the attorneys, and the parties are attached hereto; the evaluations by the attorneys and the parties are in sealed envelopes. I have submitted this report and the evaluations within seven days after the conclusion of the mediation.

**DONE** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_,  
Alabama.

\_\_\_\_\_  
Signature of mediator

Name of mediator: \_\_\_\_\_

Mailing address: \_\_\_\_\_  
\_\_\_\_\_

Telephone number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_

Appellant: \_\_\_\_\_

Appellant's Counsel: \_\_\_\_\_

Appellee: \_\_\_\_\_

Appellee's counsel: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has been served on  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to the following:

Served by:

\_\_\_\_\_ U.S. Mail to their regular mailing addresses or by

\_\_\_\_\_ Email to their regular email addresses:

s/ \_\_\_\_\_

Mediator

**NOTE: This form is to be filed within seven days after the completion of mediation by the appellate mediator. The mediator shall file this report with completed evaluations with the Appellate Mediation Office, 300 Dexter Avenue, Montgomery, Alabama 36104.**

Date: \_\_\_\_\_

### Appellate Mediation Program

### Mediator Evaluation

(To be completed by mediator)

Mediator: \_\_\_\_\_

Type of Case: [ ] \_\_\_\_\_

Other (specify): \_\_\_\_\_

*Your responses will serve as a guide to the appellate mediation office about changes or improvements that need to be made to the program. Your responses are confidential and will not be part of the appellate court file.*

The appeal was from a:

- |   |   |
|---|---|
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Other appealable order; if so, please indicate |
| <input type="checkbox"/> Final judgment after nonjury trial | statutory provision or rule allowing appeal. _____                      |
| <input type="checkbox"/> Final judgment after jury trial    | <input type="checkbox"/> Other  |

Prep Time: \_\_\_\_\_ hours                      No. of Sessions: \_\_\_\_\_

Session Time: \_\_\_\_\_ hours

Follow up Time: \_\_\_\_\_ hours

Total mediation fees for all parties: \$ \_\_\_\_\_

How did the case resolve?

- Full resolution                       Partial resolution                       No resolution
- Other (specify) \_\_\_\_\_

If the mediation resolved more than one dispute, check all that were resolved:

- Another appeal                       A trial court matter                       A matter not in litigation

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate the court's mediation program as to:

- |  |   |
|--|---|
| <input type="checkbox"/> Efficiency (scheduling, etc.) | <input type="checkbox"/> Paperwork            |
| <input type="checkbox"/> Courtesy and cooperation      | <input type="checkbox"/> Pro bono requirement |

Comments on the above, including suggestions for program improvements:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PLEASE COMPLETE THIS FORM WITHIN SEVEN DAYS OF  
COMPLETION OF MEDIATION AND RETURN TO:

Appellate Mediation Office, Alabama Supreme Court, 300 Dexter Avenue, Montgomery, Alabama 36104

Appellate Mediation Program  
Attorney Evaluation

Mediator: \_\_\_\_\_

Type of Case: [ ] \_\_\_\_\_

Other (specify): \_\_\_\_\_

*Your responses will serve as a guide to the appellate mediation office about changes or improvements that need to be made to the program. Your responses are confidential and will not be part of the appellate court file.*

I am the: \_\_\_ Appellant's attorney      \_\_\_ Other (specify) \_\_\_\_\_  
              \_\_\_ Appellee's attorney

How did the case resolve?

\_\_\_ Full resolution      \_\_\_ Partial resolution      \_\_\_ No resolution

\_\_\_ Other (specify) \_\_\_\_\_

What effect did the mediation process have on the following (Insert "ND" if no difference):

Attorney fees: \_\_\_ Reduced fees      \_\_\_ Increased fees      By how much? (estimate) \$ \_\_\_\_\_

Other costs: \_\_\_ Reduced fees      \_\_\_ Increased fees      By how much? (estimate) \$ \_\_\_\_\_

Court time: \_\_\_ Reduced time      \_\_\_ Increased time      By how much? (estimate) \_\_\_\_\_ Months

On a scale of 1(very dissatisfied) to 5 (very satisfied) please rate:

The mediation process:

\_\_\_ Appropriateness of the process for your dispute      \_\_\_ Confidentiality

\_\_\_ Fairness      \_\_\_ Satisfaction with outcome

\_\_\_ Opportunity to participate      Would you use this process again?      \_\_\_ Yes      \_\_\_ No

On a scale of 1(very dissatisfied) to 5 (very satisfied) please rate:

The mediator (name): \_\_\_\_\_

\_\_\_ Impartiality      \_\_\_ Knowledge of the appellate process

\_\_\_ Temperament      \_\_\_ Knowledge of the subject matter

On a scale of 1(very dissatisfied) to 5 (very satisfied) please rate:

Program administration:

\_\_\_ Efficiency (scheduling, etc.)      \_\_\_ Courtesy and cooperation

\_\_\_ Paperwork      \_\_\_ Mandatory participation

Comments on the above, including suggestions for program improvements:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: PLEASE COMPLETE THIS FORM AT THE TIME MEDIATION IS COMPLETED  
AND RETURN TO APPELLATE MEDIATOR IN A SEALED ENVELOPE.

(Form 16)

Date: \_\_\_\_\_

Appellate Mediation Program  
Party Evaluation

Mediator: \_\_\_\_\_

Type of Case: [ ] \_\_\_\_\_

Other (specify): \_\_\_\_\_

*Your responses will serve as a guide to the appellate mediation office about changes or improvements that need to be made to the program.  
Your responses are confidential and will not be part of the appellate court file.*

I am the: \_\_\_ Appellant                      \_\_\_ Other (specify) \_\_\_\_\_                      \_\_\_ Appellee

How did the case resolve?

\_\_\_ Full resolution                      \_\_\_ Partial resolution                      \_\_\_ No resolution

\_\_\_ Other (specify) \_\_\_\_\_

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate:

The mediation process:

\_\_\_ Appropriateness of the process for your dispute                      \_\_\_ Confidentiality  
\_\_\_ Fairness                      \_\_\_ Satisfaction with outcome  
\_\_\_ Opportunity to participate                      Would you use this process again?    \_\_\_ Yes    \_\_\_ No

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate:

The mediator (name): \_\_\_\_\_

\_\_\_ Impartiality                      \_\_\_ Knowledge of the appellate process  
\_\_\_ Temperament                      \_\_\_ Knowledge of the subject matter

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate:

Program administration:

\_\_\_ Efficiency (scheduling, etc.)                      \_\_\_ Courtesy and cooperation  
\_\_\_ Paperwork                      \_\_\_ Mandatory participation

Comments on the above, including suggestions for program improvements:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTE: PLEASE COMPLETE THIS FORM AT THE TIME MEDIATION IS COMPLETED  
AND RETURN TO APPELLATE MEDIATOR IN A SEALED ENVELOPE.**

# Survey Response: Alaska

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established? **2001**
  
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? **Appellate Rules 221-222**
  
3. Are mediations ordered by the court or is mediation an optional service provided upon request? **Both. Parties may request mediation, or the court upon its own may suggest mediation. App R 222(a) In reality, most cases are selected by the court. A retired superior court judge administers the program. Either she or another retired judge goes through all appellate filings periodically and selects cases which, in the judge's opinion, may have settlement potential. The judge contacts the parties to see if they are willing to participate in a settlement conference. If they agree, it is set up.**
  
4. When did the program begin conducting mediations? **2001 (?)**
  
5. How many civil appeals are administered by your court annually? **approx. 400-450**
  
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.

**Cases are selected on the basis of the screener's assessment of whether the case has a possibility of settlement. The following cases are excluded unless there is an affirmative request from one of the parties for mediation: workers comp, child in need of aid, significant public interest cases, such as election or hot button issues, prisoner initiated litigation.**

**Pro se cases on one side or both sides are considered as eligible for the program**

7. How many cases were mediated in the most recent year? **ten**
  
8. How many cases settled in mediation in the most recent year?  
Full settlements **eight**          Partial settlements **zero**
  
9. How does your program define a "partial settlement?"
  
10. Does your program offer mediation in cases with self-represented parties? **Yes**

If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Less than 10% Does your program employ different policies or screening in cases involving self-represented parties? Not necessarily. The parties must appear to be serious about settling and capable of doing so. Self represented "recreational litigators" are easily identified and excluded.

11. Who serves as mediators in your program? How many of such mediators are currently active in your program? Retired superior court and district court trial judges and appellate court judges are used. The number of active mediators varies, but generally there are 1-3 judges who participate during the year
12. What are the required qualifications for appellate mediators in your program? There are no formal requirements but only retired judges have been used to date
13. How are mediators selected or designated for a particular case? one
14. Are your cases mediated by one mediator or are they co-mediated? One mediator
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services. Generally, the approach is aggressively evaluative as that is what the parties seem to looking for. The process looks more like a traditional settlement conference with a judge than a neutral facilitative mediation.
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program. The program has been run quite informally and mostly by a single retired superior court judge who does 90% of the screening work. She delegates the cases out other mediating judges. The Supreme Court monitors the program from a distance and provides all the administrative assistance.
17. What is the annual cost of the program? minimal; the cost of a few plane tickets and hotel rooms
18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve

as mediators in your program? **One staff person assists the program coordinator. Settlement program duties represent a very small proportion of her overall workload.**

19. If parties are ordered to mediation in your program, are they permitted to “opt-out” of mediation? Please describe the grounds permitted to opt-out. **Parties are not ordered to mediate; it is offered.**

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe. **The court could impose sanctions but has not and probably would not. The case would simply be allowed to proceed through the normal appellate process.**

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

- 1) \_\_\_\_\_domestic\_\_\_\_\_ \_30\_ %
- 2) \_\_\_\_\_personal injury\_\_\_\_\_ \_20\_ %
- 3) \_\_\_\_\_contract dispute\_\_\_\_\_ 45\_ %
- 4) \_\_\_\_\_other\_\_\_\_\_ \_5\_ %
- 5) \_\_\_\_\_ %
- 6) \_\_\_\_\_ %
- 7) \_\_\_\_\_ %

22. If you are able to provide settlement statistics per case type, please do so.

22. What types of civil cases, if any, are ineligible for mediation in your program?  
**Matters of constitutional import in significant public interest cases**  
**Prisoner initiated litigation by in custody prisoners**

24. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

**Fewer pro se cases have been included as time has gone along. They tend to be high time demand with low positive outcome**

25. What do you rate as the most significant successes of your appellate mediation program to date? The genuine gratitude of the attorneys and litigants who are looking for a way out of the endless cycle of litigation. They are thrilled to have a judge who has the time to listen to them and who is paid by the court. The result is often satisfaction with the justice system that they formerly felt to be unfair and unresponsive.

26. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country? The challenge is find judges who are consistently committed to the process and willing to take the big and little cases.

27. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

28. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program. Appellate Rules 220 and 221 attached, below.

29. Has your program been evaluated? If so, could you share the results of the evaluation? No

Mediation Program Name: Appellate Settlement Program

Court: Alaska Supreme Court

Court Case Jurisdiction: mandatory jurisdiction in all civil appeals

Court Geographic Jurisdiction: Alaska, statewide

Name of Mediation Program Director/Administrator:

Marilyn May, Clerk of the Appellate Courts

Elaine Andrews, Retired Superior Court Judge and Program Coordinator

Margaret Newman, Administrative Assistant

Address: 303 K Street  
Anchorage AK 99501

Telephone: (907) 264-0612

Email: [mmay@appellate.courts.state.ak.us](mailto:mmay@appellate.courts.state.ak.us)  
[mnewman@appellate.courts.state.ak.us](mailto:mnewman@appellate.courts.state.ak.us)

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: July 6, 2012

Marilyn May  
Name

Marilyn May  
Signature

Clerk of the Appellate Courts  
Title  
(State of Alaska)

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

## **Rule 220. Judicial Bypass Appeals.**

(a) **Scope.** This rule applies to an appeal from an order denying or dismissing a petition filed by a minor under age 18 to bypass parental notice or consent to an abortion under AS 18.16.030. In such appeals, this rule supersedes the other appellate rules to the extent they may be inconsistent with this rule. It also supersedes the procedure for bypass appeals established by AS 18.16.030(j).

(b) **Jurisdictional Limitation.** This rule does not permit an appeal to be taken in any circumstances in which an appeal would not be permitted by Appellate Rule 202.

### **(c) Notice of Appeal.**

(1) A minor may appeal an order denying or dismissing a petition to bypass parental notice or consent by filing a notice of appeal in any district or superior court, or directly with the clerk of the appellate courts. The notice of appeal may be filed in person, by mail, by email, or by fax, and must be accompanied by a copy of the order from which the appeal is taken. No filing fee will be charged. If the notice of appeal is filed in a district or superior court, the clerk or magistrate shall immediately notify the clerk of the appellate courts that the appeal has been filed.

(2) The notice of appeal must indicate that the appeal is being filed pursuant to this rule, but the court will apply this rule to cases within its scope whether they are so identified or not.

(3) Blank notice of appeal forms will be available at all court locations and will be mailed, emailed, or faxed to a minor upon request. No fee will be charged for this service or other services provided to a minor in an appeal under this rule.

(d) **Record on Appeal.** The record on appeal consists of the superior court file, including all papers and exhibits filed in the superior court, and, unless otherwise ordered, a recording of the proceedings before the superior court. The clerk of the appellate courts shall request the record immediately upon receiving notice that the appeal has been filed. Upon receiving this request, the clerk of the trial court shall immediately transmit the record to the supreme court by overnight mail or in another manner that will cause it to arrive within 48 hours after the notice of appeal is filed.

(e) **Brief.** A brief is not required. However, the minor may file a typewritten memorandum in support of the appeal.

(f) **Oral Argument.** Unless the minor waives the right to oral argument in the notice of appeal, oral argument will be held within 72 hours, including weekends and holidays, after the notice of appeal is filed. Upon request, the minor will be allowed to participate telephonically at court system expense.

(g) **Disposition.** The court shall enter an order stating its decision immediately after oral argument or, if oral argument has been waived, within three days after the date the

notice of appeal is filed. The court may issue an opinion explaining the decision at any time following entry of the order.

(h) **Constructive Order.** If the court fails to enter an order within five days after the date the clerk of the appellate courts receives the record on appeal, the clerk shall issue a certificate stating that (1) no order was entered within five days after the appeal was docketed; and (2) under AS 18.16.030(j), the failure to enter an order constitutes a constructive order of the court authorizing the minor to consent to an abortion without notice to or the consent of a parent, guardian, or custodian. For purposes of AS 18.16.030(j), an appeal is deemed to be docketed on the date the clerk of the appellate courts receives the record on appeal.

(i) **Confidentiality.**

(1) Documents, proceedings, oral arguments, and audio or video recordings in an appeal under this rule are sealed. Court personnel are prohibited from notifying the minor's parents, guardian, or custodian that the minor is pregnant or wants to have an abortion, and from disclosing this information to any person. The court shall not release the name of, or any other identifying information concerning, a minor who files a judicial bypass appeal.

(2) All statistical and general information that the court system may have concerning judicial bypass appeals is confidential, except the number of appeals filed, granted, and denied statewide each year is public information.

(j) **Attorney.** If the minor is not represented by an attorney, the clerk of the appellate courts shall appoint the Office of Public Advocacy to represent the minor in the appeal. If the Office of Public Advocacy was appointed to represent the minor in the trial court, the appointment continues through the appeal.

(k) **Filing Defined.** For purposes of this rule only, a document is deemed filed on the date it is received by the district court, the superior court, or the clerk of the appellate courts if the appeal is filed directly with the clerk.

(SCO 1279 effective July 31, 1997; amended by SCO 1748 effective December 14, 2010; and by SCO 1755 effective nunc pro tunc to December 14, 2010)

**NOTE:** Under AS 18.16.030(j), the failure to enter a judgment in the appeal within five days after the appeal is docketed constitutes a constructive order of the court authorizing the appellant to consent to an abortion without the consent of a parent, guardian, or custodian.

**NOTE:** The changes to Appellate Rule 220 are adopted because the law concerning abortions for minors was changed by voter initiative effective December 14, 2010. The changes to the rule are being made to conform the rule with revised AS 18.16.010 - .030.

**Rule 221. Settlement Discussions in Civil Appeals.**

The attorneys for all parties to a civil appeal to the supreme court shall discuss the possibilities for prompt settlement of all or part of the appeal. This discussion must occur by the date specified in the opening notice issued by the clerk of the appellate courts. The discussion may be conducted by telephone. If the parties reach settlement on any issue on appeal, they shall immediately file an appropriate notice with the clerk of the appellate courts. Otherwise, they shall file a certificate signed by all attorneys that the attorneys, with the knowledge of their clients, have discussed settlement as required by this rule. A settlement discussion is not required in a case in which a party is appearing pro se or in a case that is exempted by the court.

(SCO 1374 effective April 15, 2001)

**Survey Response:  
Arizona  
Division 1**

MARYLAND COURT OF SPECIAL APPEALS

STATE APPELLATE MEDIATION PROGRAM SURVEY, JANUARY 2012

- (1) 1994 Pilot Program
- (2) Rule 30, Arizona Rules of Civil Appellate Procedure (ARCAP)
- (3) Participation is optional and voluntary. Once parties have agreed to participate, a court order issues staying the normal appellate process until the mediation is completed. If the mediation does not result in a settlement, the case is returned to the regular appellate docket.
- (4) 1994 Pilot Program; 1996 Regular Program
- (5) The number varies from year to year. Our records show the recent number of filing for "straight" civil appeals (i.e., no Industrial Commission, Mental Health, etc.) as follows: 2011 - 833; 2010 - 912; 2009 -790; 2008- 853.
- (6) There is one staff attorney who administers the program, who reviews all the civil filings prior to the time that opening briefs are due and selects cases that appear to be appropriate for inclusion in the program. In addition, individual parties may indicate their interest in participating in the program by checking off the relevant box on their Docketing Statement when they file the Notice of Appeal or by sending a direct request to the court.
- (7) The number of cases mediated "in the most recent year" (2010-2011) is not indicative of the norm because the court has only just transitioned from paper filings to all electronic filings, and it took some time to set up a system that would indicate when a case was actually ready for review. (We have now come up with system whereby the Clerk's Office sends a list of cases for review to the staff attorney in charge of the program once an appellant has paid his filing fee

and a letter has issued informing him when the opening brief is due.) Normally, between 30 and 40 cases per year have been assigned to the program. Thus in 2008-2009, when paper filing was still the norm, 33 cases were assigned to the program. In 2009-2010, 22 cases were assigned, and in 2010-2011, 17 cases were assigned. The lowered numbers are attributable, at least in part, to the transition process.

- (8) In 2008-2009, 18 cases settled; 2009-2010, 15 settled; 2010-2011, 10 settled. (We do not track "partial" settlements.)
- (9) See above.
- (10) We do not offer mediation in cases with self-represented parties. We made one exception to this rule once. It was a divorce case in which each party was an attorney representing himself. (The case did not settle.)
- (11) We use only retired and/or current appellate judges. At present, 9 of our current appellate judges are actively mediating cases; we are not using any retired judges.
- (12) That they be a current or retired appellate judge and that they be interested in mediating cases. A few years ago, the court held a general seminar on mediation taught by a retired appellate judge who now has a mediation practice.
- (13) The staff attorney who administers the program selects the mediator for a case based on a variety of factors, including: interest expressed by judge/mediator, background of judge/mediator, prior facility of judge/mediator for mediating similar cases, discussion with judge/mediator to ascertain interest and availability.
- (14) Our cases are mediated by one mediator. We currently have no co-mediations, although we would not exclude the possibility in an appropriate case.

- (15) Our mediators use all of the general approaches described: facilitative, directive/analytical, neutral case evaluation, etc. The particular approach varies with the mediator and the type of case being mediated.
- (16) Court leadership remains committee to the mediation program. We are, however, considering different alternatives within the traditional mediation structure. One potential change is the pairing of a paid professional mediator with one appellate judge in select cases. Another potential change could require counsel to meet with the mediator at some point prior to the scheduled mediation to help the mediator assess not only the potential for resolution but also to develop a strategy for conducting the mediation session. We are also considering making appellate mediation mandatory for certain types of cases, e.g., domestic relations. This might require a procedural rule change and approval by our supreme court.
- (17) The costs are minimal. The judge/mediators are not compensated for taking on mediations in addition to their regular duties. The parties pay no fees to participate. The mediations take place in rooms available to the court during normal working hours. The court does provide coffee during some of the sessions.
- (18) One staff attorney administers the program with the assistance of a secretary of one of the appellate judges. The duties associated with the program are carried out in addition to both of their regular duties for the court, however the staff attorney's drafting load is normally reduced by one case per month.
- (19) Parties are ordered to participate in the program, however they are permitted to opt out of participation. The rule allows for a party to submit a confidential objection to mediation, and the assigned mediator decides whether to proceed despite the objection. Given that it is a voluntary program, mediators will normally vacate the mediation if and when an objection is filed.

The most frequent reasons given for declining to participate are (1) that the parties have tried mediation before and it has failed and (2) that the parties do not believe mediation will be successful or helpful. In only one case, did a mediator decide to proceed despite a party's objection to participating; the case ultimately settled.

(20) If they agree to participate in the program, parties are required to participate in good faith. To date, failure to do so led in one instance only to the imposition of a fine. The rule does allow a mediator who "becomes aware that a lawyer has violated the Rules of Professional Conduct raising a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects" to "disclose documents and discussions relevant to that violation to the appropriate professional authority. ARCAP 30(n)(3).

(21) The majority of our mediated cases are contract cases (35-45%) followed by divorce (17-25%) and tort (12-36%). We also do 1-3 probate cases in any given year and a smattering of other types of cases (eminent domain, lien, civil rights, professional negligence, etc.). In 2008-2009: 6 out of 16 contract cases settled; 5 out of 8 divorce cases settled; 3 out of 4 tort cases settled; and 4 out of 6 probate cases settled (we had an unusual number of probate cases that year). In 2009-2010: 5 out of 8 contract cases settled; 3 out of 3 divorce cases settled; 3 out of 8 tort cases settled; and we had 0 probate cases. In 2010-2012: 3 out of 6 contract cases settled; 3 out of 3 divorce cases settled; 4 out of 5 tort cases settled; and we only had 1 probate case that did not settle. Our overall settlement rate is always over 50%: 2008-2009 - 54%; 2009-2010 - 68%; and 2010-2011 - 58%.

(22) In general, we normally do not mediate cases in which one party is representing himself or herself; divorce cases if the only issue is visitation or custody rights; criminal cases; forcible detainers; or cases involving state or

city agencies or departments, unless the agency or department has indicated an interest in a mediation.

(23) No.

(24) We have managed to settle some difficult commercial cases that, if left to proceed through the traditional appellate process, would have consumed significant resources for the parties and the court.

(25) The major challenges include critically evaluating the potential alternatives identified in answer to Question 16 and determining the level of additional staff support that might be required to implement such changes. A continuing challenge is to secure the commitment of the judges to continue, if not increase, their participation. This is a challenge due to the continuing effects of the state's economic woes and the court's reduced budget and workforce, all of which has resulted in the judges being asked to handle different tasks and work more efficiently to manage a large caseload.

(26) See answers to Questions 7, 8, 21, 24 and 25. Early disposition through successful mediation has, without question, allowed the court to continue its successful efforts to efficiently reduce its backlog of pending appeals. Additional staffing support would enhance the court's ability to identify cases appropriate for the mediation program and to manage what hopefully will be a significant increase in the number of cases that take advantage of the program.

(27) Attached.

(28) Not evaluated.

Arizona Appellate Settlement Program

Arizona Court of Appeals, Division I

Erica Bianchi-Jones, Esq.  
Settlement Program Attorney  
Arizona Court of Appeals, Division I  
1501 W. Washington, Suite 302  
Phoenix, Arizona 85007

(602) 542-4824  
ebianchi@appeals.az.gov

Permission to use survey response granted, 7/09/12 by  
Erica Bianchi-Jones per email, to Maryland Court  
of Special Appeals, office of mediation.

Survey Response

# Arizona

Division 2

AZ-div. 2

## STATE APPELLATE MEDIATION PROGRAM SURVEY

1. 1998
2. The program was initially governed by an administrative order, which was later adopted on a permanent basis as Rule 30, Arizona Rules of Civil Appellate Procedure.
3. Upon receipt of the notice of appeal, the settlement conference attorney contacts the attorneys/pro se litigants, and then decides whether or not to order the matter into appellate mediation.
4. 1998
5. During the calendar year 2011, 184 civil appeals were filed in our court, 20 of which were placed in the settlement program. 178 civil cases were terminated during the calendar year.
6. All civil appeals filed in our court are eligible for mediation with the following exceptions: appeals involving habeas corpus petitions; appeals in which a party is incarcerated; appeals from the juvenile court; appeals from the Arizona Department of Economic Security Appeals Board; direct appeals from the corporation commission, and; special actions. *See* Ariz. R. Civ. App. P. 30(c). That being said, many other types of "eligible" cases are not placed in mediation. These cases include, but are not limited to, forfeitures; appeals from the suspension of a driver's license; domestic relations matters involving legal custody or domestic violence; untimely notices of appeal, or matters where there is no final, appealable order; and, appeals involving orders of protection.
7. 21 cases were mediated during fiscal year 2010-2011. This only includes conferences actually held during the fiscal year, but does not include matters placed in the program during the fiscal year if the settlement conference was not held during that time period.
8. 15 cases settled: 14 full settlements and 1 partial settlement.

9. A partial settlement is one that, although some of the parties have settled, at least one party remains on both sides such that the matter will proceed on appeal.
10. Yes, we do offer mediation in cases with pro se litigants. We do not keep statistics on the number of cases involving pro se litigants, nor do we employ different policies or screening processes in those cases.
11. The settlement conference attorney co-mediate each matter with an appellate judge from this court, either sitting or retired. Although all of our 6 sitting judges are able to mediate, they do so with varying degrees of frequency. In addition, 2 retired judges regularly mediate for us.
12. Although some of our judges have formal mediation training, there is no requirement that they have done so.
13. The settlement conference attorney selects the judge who will mediate, often considering that individual's legal experience/background before becoming a judge.
14. See response to question 11 above.
15. We do not subscribe to any one mediation style, although we often employ a hybrid of facilitative, limited evaluative, and to some extent, transformative mediation styles.
16. With the exception of a judge's participation at the actual settlement conference, the settlement conference attorney manages all other aspects of the settlement program. This includes screening all eligible cases and determining whether they will be ordered into the mediation program; contacting the attorneys/pro se litigants; setting the conference; assuring the confidential settlement statements are filed and given to the judge after she has reviewed them; and, managing and signing all orders related to the settlement program, with the exception of orders dismissing an appeal after it has settled.

17. The salaries of the settlement conference attorney, who spends approximately one third to one half of her time on mediation-related duties, and her administrative assistant, who also works for four other staff attorneys, are not specifically allocated as costs of the program. During fiscal year 2010-2011, the court paid \$3,400 in stipends to retired judges for participating as mediators.
18. The settlement conference attorney's administrative assistant assists her in managing the settlement program. She does not serve as a mediator in the program.
19. Pursuant to Rule 30(e), Ariz. R. Civ. App. P., "[a] party may object to assignment to a settlement conference by submitting a written objection no later than five calendar days after the date of the order of assignment. The objection shall not be filed in the Court, shall be confidential, shall not be placed in the appellate case file, and need not be served upon opposing counsel." That being said, because the settlement conference attorney screens all cases before placing them in the program, we receive few written objections. Rather, cases with a valid ground for objection are rarely ordered into mediation in the first instance. Some "opt-out" grounds include a past history of failed settlements, matters in which the parties desire a published opinion from the court, and matters in which it is clear at least one party wants to continue litigation no matter what the outcome.
20. Yes. Sanctions have been imposed only one time in the thirteen-year history of the program. In that instance, counsel intentionally and without the court's permission instructed his client to leave the court, leaving counsel and the other side to continue the conference without any individual with settlement authority, contrary to court order.
21.
  - a) worker's compensation- 10%
  - b) domestic relations- 17%
  - c) attorney's fees- 10%
  - d) probate/estate- 7%
  - e) employment/wrongful discharge- 7%
  - f) construction/mechanic's lien- 10%
  - g) insurance- 3%
  - h) debt/financial matters- 10%
  - i) personal injury- 3%

j) misc. matters- 23%

21. (this should be # 22; you printed # 21 twice); Information not available.
22. (#22 on your form) See response to # 6 above.
23. No, with the exception that we began placing worker's compensation matters in the program a few years ago.
24. The savings of cost, time and anxiety to the litigants as a result of settling cases is significant, in addition to reducing the court's case load. And, the terms of settlement can be crafted to suit the needs of the parties, rather than a legal ruling by the court that may not do so. In addition, mediation permits the parties to address all of their concerns, rather than strictly addressing the issues before the court on appeal.
25. Nothing that I can think of at the moment.
26. In some years when mediation numbers have been higher, the program has disposed of the equivalent workload of an entire chambers. Even during slower years, the court has been pleased with the program, not only because it reduces the court's case load, but because of the service it provides to the community.
27. See Rule 30, Ariz. R. Civ. App. P., the rule that governs our program. Also, on our website, <http://www.appeals2.az.gov/>, see the link "Settlement Program" for further information about the program. I have previously shared all of our orders and our confidential settlement statement form with you.
28. We send evaluation forms to attorneys and pro se litigants following each settlement conference. I have shared that form with you in the past.
  - Mediation Program Name: Arizona Appellate Settlement Conference Program
  - Court: Arizona Court of Appeals, Division Two
  - Court Case Jurisdiction:
  - Court Geographic Jurisdiction: Division Two of the Arizona Court of Appeals is responsible for cases arising in Cochise,

Gila, Graham, Greenlee, Pima, Pinal, and Santa Cruz counties.

- Name of Mediation Program Director/Administrator: Geri Mose Mahrt
- Address: 400 W. Congress, Tucson, AZ 85701
- Telephone: (520) 628-6955
- Email: [mahrt@appeals2.az.gov](mailto:mahrt@appeals2.az.gov)
- Website: <http://www.appeals2.az.gov/>

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

28. Has your program been evaluated? If so, could you share the results of the evaluation?

Mediation Program Name:

Court:

Court Case Jurisdiction:

Court Geographic Jurisdiction:

Name of Mediation Program Director/Administrator:

Address:

Telephone:

Email:

Website:

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1-17-12

Geri Mose Mahrt  
Name

Geri Mose Mahrt  
Signature

Settlement Conference Attorney / Staff Attorney  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

# Survey Response: Arkansas

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established?  
2008
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?  
The program was established by a Per Curiam Order of the Arkansas Supreme Court.
3. Are mediations ordered by the court or is mediation an optional service provided upon request?  
Mediation is an optional service provided by request.
4. When did the program begin conducting mediations?  
September 1, 2008.
5. How many civil appeals are administered by your court annually?  
In 2008, the Court of Appeals administered 468 civil cases.  
In 2009, the Court of Appeals administered 432 civil cases.  
In 2010, the Court of Appeals administered 417 civil cases.
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.  
The program is available for civil cases, including domestic relations, probate and worker's compensation, but excluding juvenile and public service commission cases. The appeal must be from a final judgment and all parties must be represented by counsel. The program is voluntary – therefore the attorneys and parties agree to participate in appellate mediation.
7. How many cases were mediated in the most recent year?  
Two cases were mediated in 2011.
8. How many cases settled in mediation in the most recent year?  
Two cases were settled in mediation in 2011.  
  
Full settlements   2        Partial settlements
9. How does your program define a "partial settlement?"  
Partial settlement occurs when the parties reach agreement on some, but not all, of the pending issues.
10. Does your program offer mediation in cases with self-represented parties?  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?  
Only cases in which all parties are represented are eligible for mediation through the program.

11. Who serves as mediators in your program? How many of such mediators are currently active in your program?  
To be eligible to mediate cases in the program, mediators must be on the program Roster. There are currently 23 mediators on the Roster.
12. What are the required qualifications for appellate mediators in your program?  
To be eligible for inclusion on the program Roster, a mediator must be certified and in good standing with the Arkansas Alternative Dispute Resolution Commission, have successfully completed a six hour appellate mediation training course approved by the Appellate Mediation Office, and have appellate practice experience.
13. How are mediators selected or designated for a particular case?  
The mediators are selected by the parties. If the parties cannot agree upon a mediator within a set period of time, the program director assigns a mediator.
14. Are your cases mediated by one mediator or are they co-mediated?  
Cases are mediated by one mediator.
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.  
Mediators in the program generally employ employee facilitative and evaluative approaches to the cases, depending on the nature of the case and the needs of the parties.
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.  
The Arkansas Supreme Court established a committee to develop the program. The committee is comprised of one Justice from the Arkansas Supreme Court, the Chief Judge of the Arkansas Court of Appeals, the ADR Coordinator of the Administrative Office of the Courts, and three practicing mediators. The committee developed the program rules and provides guidance on policy issues, subject to approval and adoption by the Arkansas Supreme Court. The ADR Coordinator serves as program director and handles day to day administration, with direct guidance from the Chief Judge of the Court of Appeals.
17. What is the annual cost of the program?  
There is no set annual cost for the program. Administration of the program is handled by existing court staff and the program is funded by a grant from the Arkansas Alternative Dispute Resolution Commission. The grant covers the cost of the mediator's fee for up to 8 hours. The program costs depend on the number of cases mediated, which up to this point have been two cases per year at a cost of between \$1,800 and \$3,280 per year.
18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?  
Program operations are administered by the ADR Coordinator of the Administrative Office of the Courts. Another staff person oversees the finances of the program. No court staff mediate in the program.

19. If parties are ordered to mediation in your program, are they permitted to “opt-out” of mediation? Please describe the grounds permitted to opt-out.  
Parties are not ordered to mediation in this program.
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe.  
The program does not impose sanctions for failure to participate in mediation.  
Participation in the program is completely voluntary.
21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

- 1) \_\_\_\_\_ %
- 2) \_\_\_\_\_ %
- 3) \_\_\_\_\_ %
- 4) \_\_\_\_\_ %
- 5) \_\_\_\_\_ %
- 6) \_\_\_\_\_ %
- 7) \_\_\_\_\_ %

2008 – one probate case, no agreement

2009 – one probate case, no agreement; one Worker’s Compensation case, full agreement

2010 – one Worker’s Compensation case, settled prior to mediation; one contract case, no agreement

2011- two probate cases, both with full agreements

22. If you are able to provide settlement statistics per case type, please do so.  
Four probate cases with 50% full agreement rate  
Two Worker’s Compensation cases, with 50% full agreement rate  
One Contract case, 0% agreement rate
22. What types of civil cases, if any, are ineligible for mediation in your program?  
The program accepts all cases except those in which there is no final judgment, one or more of the parties is pro se, cases from the Juvenile Division of the Circuit Court system, or Public Service Commission cases.
23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.  
No, the program has not been modified since its creation.

24. What do you rate as the most significant successes of your appellate mediation program to date?

Our most significant success to date is attorney and party satisfaction with the program. While few attorneys and litigants have utilized the program, those that have indicate a very high level of satisfaction with the program regardless of the outcome of the mediation.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

One of the major challenges for the program is getting attorneys and litigants to utilize it. Because the program is completely voluntary, all attorneys in the case must first be willing to opt in. While most attorneys are familiar with mediation at the trial court level, they are not familiar with the benefits of mediation at the appellate level.

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

Due to the very small number of cases in the program, there has been no real impact on the workload of the court.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

28. Has your program been evaluated? If so, could you share the results of the evaluation?

No, to date the program has not been evaluated.

Mediation Program Name: Arkansas Appellate Mediation Pilot Program

Court: Arkansas Court of Appeals

Court Case Jurisdiction: All cases appealed are filed in the Court of Appeals except those involving interpretation or construction of the Constitution of Arkansas; criminal appeals in which the death penalty or life imprisonment has been imposed; petitions for quo warranto, prohibition, injunction, or mandamus directed to the state, county, or municipal officials or to circuit courts; appeals pertaining to elections and election procedures; appeals involving the discipline of attorneys-at-law and or arising under the power of the Supreme Court to regulate the practice of law; appeals involving the discipline and disability of judges; second or subsequent appeals following an appeal which has been decided in the Supreme Court; and appeals required by law to be heard by the Supreme Court.

Court Geographic Jurisdiction: Statewide

Name of Mediation Program Director/Administrator: Jennifer Taylor

Address: 625 Marshall Street\  
Little Rock, AR 72201

Telephone: (501) 682-9400

Email: Jennifer.Taylor@arkansas.gov

Website: <http://courts.arkansas.gov/adr/>

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

*Permission to use survey response granted 7/17/12 by Jennifer Taylor to Maryland Court of Special Appeals, office of mediation in email.*

Survey Response

# California

1<sup>st</sup> District

SEE ANSWERS IN ATTACHMENT

STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established?
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?
3. Are mediations ordered by the court or is mediation an optional service provided upon request?
4. When did the program begin conducting mediations?
5. How many civil appeals are administered by your court annually?
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.
7. How many cases were mediated in the most recent year?
8. How many cases settled in mediation in the most recent year?  
Full settlements \_\_\_\_\_ Partial settlements \_\_\_\_\_
9. How does your program define a "partial settlement?"
10. Does your program offer mediation in cases with self-represented parties? If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?
11. Who serves as mediators in your program? How many of such mediators are currently active in your program?
12. What are the required qualifications for appellate mediators in your program?
13. How are mediators selected or designated for a particular case?
14. Are your cases mediated by one mediator or are they co-mediated?
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.
17. What is the annual cost of the program?

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?
19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons arising from the mediation process? If so, have such sanctions been imposed? Please describe.
21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)
- 1) \_\_\_\_\_ %
- 2) \_\_\_\_\_ %
- 3) \_\_\_\_\_ %
- 4) \_\_\_\_\_ %
- 5) \_\_\_\_\_ %
- 6) \_\_\_\_\_ %
- 7) \_\_\_\_\_ %
21. If you are able to provide settlement statistics per case type, please do so.
22. What types of civil cases, if any, are ineligible for mediation in your program?
23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.
24. What do you rate as the most significant successes of your appellate mediation program to date?
25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?
26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

28. Has your program been evaluated? If so, could you share the results of the evaluation?

Mediation Program Name:

Court:

Court Case Jurisdiction:

Court Geographic Jurisdiction:

Name of Mediation Program Director/Administrator:

Address:

Telephone:

Email:

Website:

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date:

1/12/12

Name

Signature

Title

*YOU ARE NOT AUTHORIZED TO PUBLISH RESPONSES TO QUESTIONS 21 NOR ANY INFO CONTAINED IN THE ATTACHMENTS*  
*CARY WETZEL*  
Mediation Program Administrator

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

1. 2000
2. Rule and order
3. Ordered by the Mediation Program Administrator
4. 2000
5. Approximately 90 -- 100
6. Mediation Program Administrator reviews Case Screening Forms and, in consultation with counsel, refers cases in which parties agree to attend
7. Approximately 95
8. Approximately 50%
9. N/a
10. No
11. There are approximately 230 mediators on the panel of which approximately 75 are actively appointed to cases. They include retired judges and appellate justices and attorneys and other professionals
12. All have had to take a 40 hour training course or equivalent
13. The Mediation Program Administrator makes the selection based on fuzzy criteria unless the parties request appointment of a specific mediator
14. Mostly single mediator some co-mediation
15. Mediators use all kinds of processes and many use multiple processes
16. There is a mediation committee which meets rarely and a supervising justice with whom the Mediation Program Administrator meets occasionally to discuss policy issues
17. Approximately \$300,000 (actual amount unknown to this author)
18. 1 Mediation Program Administrator (attorney mediator) 1 clerical person. The Mediation Program Administrator occasionally mediates cases
19. The Mediation Program Administrator can withdraw a case after it has been referred if it seems reasonable to do so in his discretion
20. Sanctions may be imposed for failure to attend unless attendance excuse or for failure to pay any fees that parties may have agreed to pay to mediator for time in excess of donated time. Sanctions have not been imposed during the author's tenure (since April 2009.)
21. See attached table which shows resolved cases per case type and caveats preceding
22. None
23. Many very difficult cases have been resolved by mediators prior to the court having to invest any time or energy into the substantive work of adjudicating the appeal. I suspect that at least some of the agreements reached have been "better for the parties" than the outcome of the appeal would have been and it may be that the process afforded parties greater sense of control over their own lives.
24. What is quality mediation? How to decide who is good as a mediator and why.
25. The mediation program has helped reduce the caseload but there is no indication that it has had any impact on the need for judicial resources. The primary impact on the prospect of additional resources is the budget.
26. Go to: <http://www.courts.ca.gov/2122.htm>
27. No external evaluation
28. Court of Appeal, First Appellate District Mediation Program
  - a. Court of Appeal, First Appellate District California

- b. All general civil and criminal appeals from Superior Court in large multi-county district including all of San Francisco Bay Area and much of northwest California
- c. Mediation Program Administrator is Gary Weiner
- d. 350 McAllister St., San Francisco California 94102
- e. Gary.weiner@jud.ca.gov
- f. 415-865-7375
- g. Go to: <http://www.courts.ca.gov/2122.htm>

Survey Response

# California

2<sup>nd</sup> District

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established?

Settlement program has been in existence since 1980. It evolved into the current mediation program in 2002.

2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?

A Steering Committee consisting of justices, court staff and mediators decided on the logistics of the current program. The California Rules of Court, Internal Operating Practice Procedure for the Second District governs the mediation program.

3. Are mediations ordered by the court or is mediation an optional service provided upon request?

Mediation is an optional service provided upon request. There is an order issued ordering parties to appear for mediation once parties agree they would like to mediate.

4. When did the program begin conducting mediations?

2002

5. How many civil appeals are administered by your court annually?

2715 cases were filed last fiscal year.

6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.

There is no selection process. Parties are made aware of the mediation program through a form called a Mandatory Docketing Statement. All civil cases are acceptable and admitted into mediation.

7. How many cases were mediated in the most recent year?

66

8. How many cases settled in mediation in the most recent year?

37

Full settlements \_\_\_\_\_ Partial settlements \_\_\_\_\_

9. How does your program define a "partial settlement?"

Where a settlement does not dispose of the case as to all parties.

10. Does your program offer mediation in cases with self-represented parties?

If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?

No. No self-represented party may participate in the program, unless they are licensed attorneys.

11. Who serves as mediators in your program? How many of such mediators are currently active in your program?

Attorneys and mediators in the community volunteer their time.

12. What are the required qualifications for appellate mediators in your program?

They must be trained through the county bar association or otherwise and must have some on the field experience.

13. How are mediators selected or designated for a particular case?

Mediators are selected by the expertise they have in a given subject-matter.

14. Are your cases mediated by one mediator or are they co-mediated?

One mediator.

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

The program accepts mediators with all mediation styles. Because of limited data, it is unclear which approach is most effective for appellate mediation cases. In the future, hopefully, there will be some data collected and some analysis of the data applied.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

The clerk has the authority to issue all orders related to mediation in the name of the Administrative Presiding Justice.

17. What is the annual cost of the program?

Outside of staff time, the court spends \$500 on supplies. In the past, the court has spent 25-30K annually on training mediators.

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?

One full time staff member manages the administration of the program with the guidance of the Clerk of the Court. None serve as mediators.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.

Yes. Parties may opt out at any time, even where the order directs them to attend mediation. If parties feel mediation is futile, it is in the best interest of all those involved to cancel mediation; otherwise, it's a waste of time/money.

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons arising from the mediation process? If so, have such sanctions been imposed? Please describe.

Yes, the court is authorized to impose sanctions, but none have been imposed to date.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

There is not enough data available now to answer this question.

- 1) \_\_\_\_\_ %
- 2) \_\_\_\_\_ %
- 3) \_\_\_\_\_ %
- 4) \_\_\_\_\_ %
- 5) \_\_\_\_\_ %
- 6) \_\_\_\_\_ %
- 7) \_\_\_\_\_ %

21. If you are able to provide settlement statistics per case type, please do so.  
There is not enough data available now to answer this question.

22. What types of civil cases, if any, are ineligible for mediation in your program?

All are eligible.

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

No. The program lacks organization, but it's a work-in-progress.

24. What do you rate as the most significant successes of your appellate mediation program to date?

Parties feel the program brings them closer to reaching a resolution outside of litigation.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

It's effectiveness; how best to commit parties; whether contracting private mediators is the best approach.

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

Cases get mediated in the beginning, before parties begin briefing. If it gets settled, it alleviates the workload from court staff.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

28. Has your program been evaluated? If so, could you share the results of the evaluation?

Yes, it gets evaluated by the parties who participate in the program. All are satisfactory.

Mediation Program Name: Second Appellate District Mediation Program

Court: The Court of Appeal of California, 2<sup>nd</sup> District

Court Case Jurisdiction: The second highest review court in California.

Court Geographic Jurisdiction: Counties of Los Angeles, Ventura, Santa Barbara, and San Luis Obispo.

Name of Mediation Program Director/Administrator: Arpine Akopyan

Address: 300 S. Spring St., 2<sup>nd</sup> Floor, North Tower, Los Angeles, CA 90013

Telephone: 213-830-7000

Email: 2d1.mediation@jud.ca.gov

Website: www.courts.ca.gov/2dca

Court Programs  
Mediation

I hereby give permission to the Office of Mediation, Maryland Court of Special

Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Arpine Akopyan

2/1/2012

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

A.A.

\_\_\_\_\_  
Signature

Mediation Program Coordinator

\_\_\_\_\_  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

## Mediation Program Rules

### Overview

- Participating in the mediation program is voluntary.
- The program is unavailable to self-represented litigants.
- All requests for mediation must be made in good-faith.
  - The mediation program will deny access to parties whose requests are not made in good-faith.

### Initiation

- The mediation process commences as soon as possible after the filing of the Notice of Appeal by way of a Mandatory Docketing Statement.
  - Parties may stipulate to mediate at a later time.
  - Parties may participate by invitation of the court.

### The mediators

- The Mediation Coordinator matches mediators to specific disputes from its private panel consisting of experienced mediators.
- The mediator shall be deemed for all purposes to be a “person presiding at [a] judicial or quasi-judicial proceeding” within the meaning of Evidence code section 703.5, which restricts the competence of such persons to testify regarding what occurs at the mediation session.
- Mediators will donate a total of six hours of pro-bono time – preparing and mediating.
  - After a total of six hours of preparation and/or mediation, mediators may charge the parties for additional mediation services rendered, at their hourly rate, provided all parties agree.

### Sanctions

- Once an Order Scheduling Mediation Conference has been issued, parties must attend the mediation conference or risk being sanctioned.

### Cooperation

- All participants must fully cooperate with any requests made by the mediator.
- Attorneys must engage and prepare their clients for the mediation session.

### Attendance

- All parties and their counsel must attend the mediation session.
  - All parties attending the mediation session must have full authority to settle.

### Extensions of time for briefs

- Participation in the mediation program does not stay the briefing schedule.
  - Parties must file extensions of time to file briefs with the court of appeal.

DATE:

I have read the Mediation Program Rules and will comply with the rules stated herein.

(TYPE INITIALS)

\_\_\_\_\_  
(TYPE NAME)

COURT OF APPEAL, SECOND DISTRICT, <u>MEDIATION</u>	Court of Appeal Case Number:
Case Name:	Your name:
	Counsel for:
<b>MEDIATION FORM</b>	
<p><b>NOTE TO ALL COUNSEL:</b> Your case is now pending in the court's Mediation Program. The purpose of this form is to determine if your case is viable for mediation. This form will not be filed in the court's docket. All counsel must review, complete, and submit this form within 14 days of receipt. If this form is not received from all counsel within 21 days, the case will be taken out of the mediation program with the understanding that not all parties agree to mediate. Email form to <a href="mailto:2d1.mediation@jud.ca.gov">2d1.mediation@jud.ca.gov</a>; or, fax to 213-830-7033.</p> <p><b>THIS FORM IS CONFIDENTIAL AND WILL ONLY BE SHARED WITH THE MEDIATOR.</b></p>	

**A. SUBJECT MATTER**

List all that apply

- |   |   |  |  |   |
|---|---|--|--|---|
| <input type="checkbox"/> Antitrust                  | <input type="checkbox"/> Corporation      | <input type="checkbox"/> Entertainment             | <input type="checkbox"/> Landlord-Tenant disputes  | <input type="checkbox"/> Probate – Decedents' estates |
| <input type="checkbox"/> Anti-SLAPP/C.C.P. § 425.16 | <input type="checkbox"/> Defamation       | <input type="checkbox"/> Environmental             | <input type="checkbox"/> Legal Malpractice         | <input type="checkbox"/> Probate – Trust              |
| <input type="checkbox"/> Bankruptcy                 | <input type="checkbox"/> Disability       | <input type="checkbox"/> Family                    | <input type="checkbox"/> Medical Malpractice       | <input type="checkbox"/> Product Liability            |
| <input type="checkbox"/> Business/Commercial        | <input type="checkbox"/> Discrimination   | <input type="checkbox"/> Health Care               | <input type="checkbox"/> Partnership               | <input type="checkbox"/> Real Estate – Commercial     |
| <input type="checkbox"/> Civil Rights               | <input type="checkbox"/> Education        | <input type="checkbox"/> Housing/Home-owners Assn. | <input type="checkbox"/> Personal Injury           | <input type="checkbox"/> Real Estate – Residential    |
| <input type="checkbox"/> Construction               | <input type="checkbox"/> Elder Abuse      | <input type="checkbox"/> Insurance                 | <input type="checkbox"/> Premises Liability        | <input type="checkbox"/> Securities                   |
| <input type="checkbox"/> Contracts                  | <input type="checkbox"/> Eminent Domain   | <input type="checkbox"/> Intellectual Property     | <input type="checkbox"/> Probate – Conservatorship | <input type="checkbox"/> Tax                          |
|   | <input type="checkbox"/> Employment/Labor | <input type="checkbox"/> International             |  |   |

**B. MEDIATION SESSION DATES**

List all available dates verified by ALL parties. Counsel must confer with each other and provide mutually agreeable dates. A minimum of 3 dates must be listed with at least one month window from the date this form is submitted.

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**C. PRE-MEDIATION PHONE CONFERENCE DATES**

A phone conference is between the mediator and counsel only and typically lasts ½ hour. Counsel must confer with each other and provide mutually agreeable dates.

AM    PM                     
  AM    PM                     
  AM    PM

---



Case Name:	Court of Appeal Case Number:
------------	------------------------------

9. What would you like to accomplish during mediation? (Please list a dollar amount you wish to seek or offer the opposing party.)

10. What is the current relationship between the parties?

11. List the names and roles of all who will be present during mediation

12. If settlement of this case has been attempted before, please provide the following information:

(a) At what stage were settlement talks held?

(b) How many settlement attempts were made?

(c) What were the results of each settlement attempt?

DATE:

I declare that the foregoing is true and correct.

(TYPE INITIALS)

\_\_\_\_\_  
(TYPE NAME)

Survey Response

# California

3<sup>rd</sup> District

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established?  
*October of 2006*
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?  
*Promulgation and implementation of Local Rule 1 [copy attached]*
3. Are mediations ordered by the court or is mediation an optional service provided upon request?  
*Mediation is mandatory upon order of court*
4. When did the program begin conducting mediations?  
*Summer of 2007*
5. How many civil appeals are administered by your court annually?  
*Average of past two fiscal years: Notices of appeal: 517.5  
Dispositions by opinion: 219*
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.  
*A justice reviews mediation statements submitted by the parties, and decides whether the appeal should be selected for mandatory mediation. The criteria is primarily that justice's opinion as to the likelihood that the appeal can be successfully mediated.*
7. How many cases were mediated in the most recent year?  
*Fiscal year 2010-2011: 95 appeals were selected for mediation.*
8. How many cases settled in mediation in the most recent year?  
*Fiscal year 2010-2011: 29 selected appeals were settled prior to mediation conference.  
61 selected appeals were settled after mediation conference.*  
Full settlements   90        Partial settlements   0
9. How does your program define a "partial settlement?"  
*The Mediation Program does not recognize partial settlements - if a selected appeal proceeds to disposition on the merits, it is deemed to not have been successfully mediated.*
10. Does your program offer mediation in cases with self-represented parties?  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?  
*The Mediation Program does not exclude pro se appeals. However, few pro se appeals are selected for mandatory mediation because most often those appeals are not good candidates for successful mediation. The best estimate is that less than 10% of mediated cases involve a self-represented party.*

11. Who serves as mediators in your program? How many of such mediators are currently active in your program?  
*Mediators are volunteers, almost all of whom are licensed attorneys. We use of few nonattorney volunteer mediators - individuals with extensive other mediation experience.*
12. What are the required qualifications for appellate mediators in your program?  
*There are no absolutely mandatory qualifications. The Mediation Program solicits applications, and the justices on the Mediation Program Committee evaluate the applications and select the mediators.*
13. How are mediators selected or designated for a particular case?  
*The Mediation Program Coordinator evaluates both the appeals and the mediators and attempts to best match appeal to mediator.*
14. Are your cases mediated by one mediator or are they co-mediated?  
*In rare cases, the appeal is mediated by two mediators - usually for the purpose of training a less experienced mediator in mediation of that particular type of appellate mediation. Of the last 400 cases mediated, only 9 were co-mediated.*
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.  
*As best as can be gleaned from our statistics, the mediation approach generally falls within three separate categories: 75% facilitative, 20% evaluative, and 5% directive.*
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.  
*Responsibility for the day-to-day operation of the Mediation Program is delegated to the Mediation Program Coordinator. Policy-level decisions are made by the Mediation Program Committee which is steered by three associate justices.*
17. What is the annual cost of the program?  
*In fiscal year 2010-2011, the total budget for the Mediation Program was \$293,067.*
18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?  
*The Mediation Program is managed, administrated, and operated by two employees, the Mediation Program Director and a Judicial Secretary II. Neither employee serves as a Mediator.*
19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.  
*There is no "opt-out" provision.*
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe.

*Yes, Local Rule 1 has a sanctions provision. So far, an order to show cause re sanctions has been once issued, but in that case no sanctions were ultimately imposed.*

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)  
*Statistics are available only for cases that have been successfully mediated. In fiscal year, 2009-2010, the % are:*

1) Tort	43.4%
2) Contract	38.0%
3) Family Law	19.0%
4) Real Property	9.4%
5) Equitable Action	9.4%
6) Writ Proceedings	3.7%
7) Probate	2.0%
8) Other	2.0%

*The total exceeds 100% because some cases involve more than one category and hence, for these statistical purposes, were counted in multiple categories.*

21. If you are able to provide settlement statistics per case type, please do so.  
*See number 20 above.*
22. What types of civil cases, if any, are ineligible for mediation in your program?  
*Appeals from judgments and orders in conservatorship, guardianship, and sterilization proceedings.*
23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.  
*There have been no major modifications to the Mediation Program.*
24. What do you rate as the most significant successes of your appellate mediation program to date?  
*The rate of success of mediation has far outweighed our expectations. In the four years of operation, the court placed 21.1% of its nonexempt civil appeals into the Mediation Program, and successfully mediated 82.8% of those selected appeals; so we successfully mediated 17.5% of nonexempt civil appeals.*
25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?  
*At this point, the two most significant challenges facing the Mediation Program are: (1)*

*re-evaluation of the selection process - given the rate of success, should we consider selection a higher proportion of appeals for the Program; and (2) replacement of highly successful mediators who have fulfilled their obligation to the court.*

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

*The Mediation Program has resolved a significant number of appeals that otherwise would have been assigned to justices for disposition by written opinion. Our rough estimate is that the Mediation Program is presently reducing the need for judicial resources by about .75 of a justice chambers, including support staff (a chambers consists of one justice, one judicial assistant, and three staff attorneys). The obtaining of judicial resources is not premised on backlog of cases but more on political factors, so whether or not the Mediation Program was operating has not been a factor in need for judicial resources. We are, however, less backlogged than we would be had the Program not been operating.*

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

*Attached hereto is a copy and our Mediation Handbook with appendices including a copy of Local Rule 1.*

28. Has your program been evaluated? If so, could you share the results of the evaluation?

*No.*

Mediation Program Name: *Mediation Program*

Court: *California Court of Appeal, Third Appellate District*

Court Case Jurisdiction: *Civil, Criminal, and Juvenile Appeals and Original Proceedings arising from superior (or trial) court cases. Mediation Program is limited to civil appeals, exempting conservatorship, guardianship, and sterilization appeals.*

Court Geographic Jurisdiction: *23 North Eastern Counties of State of California*

Name of Mediation Program Director/Administrator: *Anne K. Meline, Mediation Program Coordinator*

Address: *2890 Gateway Oaks Dr.  
Sacramento, CA 95814*

Telephone: *(916) 643-7084*

Email: [rene.ackerman@jud.ca.gov](mailto:rene.ackerman@jud.ca.gov)

Website: <http://www.courts.ca.gov/3140.htm>

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: January 27, 2012

David Parker Hall

Name



Signature

Managing Attorney

Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

**Court Of Appeal  
Third Appellate District  
Appellate Mediation Program**



**Mediator's Handbook**

**April/May 2010**

**Anne K. Meline  
Mediation Program Coordinator**

# **MEDIATOR'S HANDBOOK**

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**Court Of Appeal, Third Appellate District  
APPELLATE MEDIATION PROGRAM**

**Contact Information:**

Contact Information: Anne K. Meline  
Mediation Program Coordinator

Rene Ackerman  
Judicial Secretary

Program Address: 2890 Gateway Oaks Drive, Suite 210  
Sacramento, California 95833

Program Telephone: 916-274-5895

Program Fax Number 916-641-6527

**Third Appellate District  
Civil Appeal Mediation Committee**

**Hon. Harry Hull, Jr., Associate Justice  
Hon. M. Kathleen Butz, Associate Justice  
Hon. Tani Cantil-Sakauye, Associate Justice  
David P. Hall, Managing Attorney  
Deena C. Fawcett, Clerk Administrator  
Colette Bruggman, Assistant Clerk Administrator  
John G. Sulpizio, Court Services Administrator  
Charity Kenyon, Kenyon & Yeates  
Brendon Ishikawa, Attorney**

# **Court Of Appeal, Third Appellate District**

## **APPELLATE MEDIATION PROGRAM**

### **MEDIATOR'S HANDBOOK**

**April/May 2010**

#### **INTRODUCTION**

The purpose of this handbook is to provide a familiarity with, and guidance through, the mediation process for those who have been accepted as volunteer mediators for the Court of Appeal, Third Appellate District, Appellate Mediation Program (Program).

The Appellate Mediation Committee (Committee) is comprised of justices and staff of the Court of Appeal, Third Appellate District, as well as a representative from the Sacramento-area legal community. The Committee has dedicated itself to designing a program that will provide an efficient, fast-paced method for selection of civil appeals for mediation. Furthermore, once a civil appeal is considered suitable for mediation, mandatory adherence to strict timelines facilitates swift passage toward completion of the mediation process.

#### **ADVANTAGES OF APPELLATE MEDIATION**

- **Can avoid the risk of reversal.** At the appellate level the risk of reversal, though low, still exists. Mediation represents a cost-effective alternative through resolution of the matter before further expense at the appellate level (or with reversal, further trial proceedings).
- **Can avoid financial risk.** A judgment may be worth less than face value if there is a significant risk that the judgment debtor will go bankrupt or if a delayed judgment satisfaction will have adverse effects. In addition, a mediated resolution may avoid or mitigate unfavorable tax consequences.
- **Can bring more satisfactory results.** Often the trial court judgment does not satisfy even the prevailing party. A mediator can assist the parties to achieve **their real interests**.
- **Can save money.** The mediation process begins at the outset of the appeal. This can save substantial costs of preparing the record and briefs.
- **Can save time.** Mediation can resolve a dispute in a matter of days, while an appeal can take months or even years.
- **Can provide greater client participation.** Clients often are frustrated by a restricted role in pretrial and trial proceedings. Once the trial record is complete, clients can have greater participation and satisfaction in determining the resolution of their disputes. Often, this aids attorney-client relations.
- **Can reduce stress.** Mediation encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Litigation is very stressful. Most people reach a point where they want to get on with their life, with their business, and, sometimes, with their relationship with other parties.

## TERMS

### **Appellate Record:**

In order for the Court of Appeal to review a trial court decision, the trial court record must be transmitted to the Court of Appeal. Pursuant to Local Rule 1, upon filing of a notice of appeal with the trial court, the requirement to designate and pay for the appellate record is stayed until conclusion of mediation or determination that the matter is not suitable for mediation (see appendix 1).

### **Assignment and Replacement of Mediator:**

The Appellate Mediation Program Coordinator (Coordinator) independently assigns mediators to matters deemed suitable for mediation. The Coordinator can replace a selected mediator upon written request by the mediator or any party.

### **Calculating Deadlines for Preparation of the Record and Deposit of Funds:**

The date on any termination notice issued by the Coordinator is treated as the *filing date of the notice of appeal*, that is, it is the date from which all deadlines related to the preparation of the appellate record are calculated. (See appendices 11 & 23.)

### **Communication with the Parties or their Counsel:**

Pursuant to Local Rule 1, “[t]he mediator may at any time communicate with any of the parties or their counsel *with or without notice* to the other parties or their counsel.” (Appendix 6.)

### **Confidentiality:**

Pursuant to Local Rule 1 and consistent with California Evidence Code sections 703.5 and 1115 through 1128, the mediation participants are required to sign a Confidentiality Agreement. Please refer to the appendix for a copy of the Confidentiality Agreement. (Appendix 6.)

### **Conference Call Services:**

In order to facilitate the requirement that any individual with full authority to settle must attend a mediation session, the Court of Appeal, Third Appellate District, has retained a professional conference call service. Program mediators initiate phone conferences through that service. (Appendix 6.)

### **Continuation of Mediation Session Date:**

The mediator, with the approval of the Coordinator, may, for good cause, postpone or continue a mediation session to a date certain.

In instances where the parties and their counsel have requested a continuation of their mediation session date, a stipulation to continue the mediation date is desired. The stipulation must contain the date to which the mediation is being continued, must be signed by both counsel, and must be served on all parties.

### **Continuation of Selection of the Mediation Date:**

Immediately upon determination that a civil appeal is suitable for placement in the Program, the Coordinator issues the Court's order of placement (appendix 5). Simultaneously, the Coordinator issues a notice that identifies three dates that the mediator is available to mediate the case (appendix 6). Ten days from the date of the Coordinator's notice, counsel must mutually consult and select from the three dates provided one date for the mediation session.

In rare instances, counsel may not be able to mutually agree on the mediation session date. In this instance, the Coordinator will schedule the mediation at the convenience of the mediator.

### **First 4 Hours of Mediation Session:**

The first four hours of mediation are provided without cost to the parties. Upon agreement between the parties and the mediator, mediations exceeding four hours will continue at the mediator's hourly rate, paid by the parties.

### **Full Authority to Settle:**

Pursuant to Local Rule 1, "[A]ll parties and their counsel of record must attend all mediation sessions in person with full authority to settle. . . . Any exception to this requirement must be approved in writing by the mediator." (Appendix 1.)

The mediator has final authority over who has full authority to settle and therefore who must appear at a mediation session. Any exception to the appearance of any party designated as having full authority to settle cannot occur without permission of the mediator. Exceptions are rare. Requests for exceptions must be in writing and be supported by good cause.

Matters of attendance, and confined strictly to attendance, are not subject to the Confidentiality Agreement signed by all participants. Intentional violations of mandatory attendance may result in sanctions.

### **International Phone Calls:**

The Court of Appeal, Third Appellate District, does not fund international phone conference services under any circumstances. In the event an international call is required to facilitate attendance of a party with full authority to settle, charges and all arrangements will be sustained entirely by counsel.

### **Interpreters for non-English Speaking Mediation Participants:**

The Court of Appeal, Third Appellate District, does not fund interpreters for non-English speaking participants under any circumstances. If an interpreter is necessary, counsel must provide an interpreter at counsel's own expense.

### **Interview of Assigned Mediator:**

Counsel who might be concerned about the compatibility of the selected mediator are welcome to communicate with the assigned mediator at any time.

### **Mediation defined:<sup>1</sup>**

Mediation is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator helps the parties explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not resolve the dispute. The parties do.

### **Mediators:**

The members of the Third District Court of Appeal, Mediation Committee have recruited experienced mediators and appellate specialists, based on their training, experience, and areas of expertise. In addition, to ensure consistency in the delivery of its mediation service, the Court requires all of its volunteer mediators to complete an intensive course of training in appellate mediation by a training entity retained by the Court of Appeal.

### **Mediation Program Coordinator:**

The Coordinator, a sworn deputy of the Court of Appeal, acts under the direction of the Committee, the Administrative Presiding Justice, or a designated Supervising Associate Justice of the Court of Appeal. (Appendix I.)

Notwithstanding working at the direction of the Court of Appeal, the Coordinator functions autonomously as the court's independent Program administrator. As such, the Coordinator is the primary contact person for the parties and the mediator during every phase of the mediation process.

The Coordinator, after initial screening by a justice of the Court, independently assesses all civil appeals for placement in the Program and matches the appropriate mediator with the selected civil matter.

### **Notice of Termination by Coordinator**

Whenever an appeal is identified as not suitable for mediation, a stipulation for placement into mediation is rejected, or mediation does not resolve the issues on appeal, the Coordinator immediately issues to the parties, the trial court, and the Court of Appeal a notice terminating the suspension of the operation of the rule governing preparation of the appellate record. The rule governing preparation of the record and payment of all estimated fees is California Rules of Court, rule 8.121. (Appendices 11, 12).

For the purposes of jurisdictional deadlines, the date indicated in the Coordinator's notice of termination is treated as the filing date of the notice of appeal, all relevant dates are computed from that date.

Counsel or parties who disagree with an assessment of non-suitability may serve and file a stipulation to mediate with the Court of Appeal.

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<sup>1</sup> Reproduced with the permission of John Toker, Mediation Program Administrator, Court of Appeal, First Appellate District.

**Private Mediators:**

Parties who jointly agree to retain a private mediator for appellate matters ordered to mandatory mediation are responsible for all related costs and fees. Privately retained mediators are not subject to this Court's Local Rule or any portion of the Court's order related to mediations conduct or attendance at mediations conducted under the jurisdiction of this Court's Local Rule or related order.

**Representation of Mediators in Event of Subpoena:**

In recognition of the services provided by mediators who volunteer their time in mediation of cases for Program, the Administrative Office of the Courts (AOC), Office of the General Counsel, will provide representation for any volunteer mediator who, in connection with a *no-fee mediation*, is subpoenaed in an effort to seek disclosure of confidential information from such mediation. Mediators are not covered for any paid portion of a mediation performed for the Court of Appeal.

With regard to mediations that evolve into "fee-for-service" mediations, the mediator must have the parties execute an agreement concerning fees that is separate from the Appellate Mediation Program's no-fee agreement. As part of that separate agreement, the mediator should address non-disclosure issues as well as contract issues in the event a mediation session evolves from no-fee to fee-for-service without a change in physical location.

**Rule Governing the Appellate Record:**

The rule governing the designation, preparation, and payment for the appellate record is California Rules of Court, rule 8.121.

Upon termination of the suspension of the rule governing preparation of the appellate record, the parties and the trial court are required to proceed as if the notice of appeal had been filed on the date specified in the Coordinator's notice of termination. (Appendix 1.)

**Selection of Program Mediators:**

Pursuant to Local Rule 1, "[t]he Committee must specify the qualifications, training and process for appointment of mediators to the Program panel. (Appendix 1.)

**Stipulation to Mediation:**

Parties whose civil matters have been deemed not suitable for mediation may disagree with that determination. A stipulation for placement in mediation is required in order for the Court to reconsider the determination that the matter is not suitable. Any stipulation must be served and filed with the Court of Appeal by ten days from the date of the order of non-suitability.



### **Subject Matter of Disputes:<sup>2</sup>**

While there are disputes that can only be determined by a decision of the appellate court, many appellate disputes can be resolved through mediation. Examples are, business, civil rights, corporations, construction, consumer protection, contracts, copyrights, defamation, disabilities, discrimination, domestic relations, employment, harassment, health care, housing, insurance, intellectual property, labor, landlord/tenant, the media, medical malpractice, and other professional negligence, neighborhood problems, partnerships, patents, personal injury, probate, product liability, property damage, real estate, securities, and taxes.

### **Travel Reimbursement:**

The Court of Appeal, Third Appellate District, **does not** reimburse mediators or mediation session participants for travel expenses of any nature or under any circumstances.



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<sup>2</sup> Reproduced with the permission of John Toker, Mediation Program Administrator, Court of Appeal, First Appellate District.

## THE MEDIATION PROCESS

The continuum through which a civil appeal travels as it moves from filing in the trial court to identification as either suitable or not suitable for placement in the Program is designed to be efficient and expeditious.

### **Filing of the Notice of Appeal in the Trial Court:**

From the moment a civil appeal is filed in the trial court, pursuant to Local Rule 1, the preparation of the record on appeal is suspended. (See Cal. Rules of Court, rule 8.121.)

Suspension of the preparation of the record on appeal, with few exceptions, defers the remainder of the appellate process until the Coordinator, under strictly monitored deadlines for the receipt of the required assessment documentation, determines a civil appeal's suitability for placement in the Program.

Pursuant to Local Rule 1, all civil appeals will be assessed and either selected or not selected for placement in the Program.

The parties are notified regarding whether a matter is selected or not selected for mediation in every assessed civil appeal. Notification is provided in the form of a Court order and a notice from the Coordinator. (Appendices 5 & 11.)

The following sections detail the mediation process pursuant to the provisions of Local Rule 1. Please refer to the sample notices and forms included in the Appendix to this handbook for examples of documents used during the mediation process.

### **LOCAL RULE 1**

#### **Local Rule 1 Establishes the Appellate Mediation Program:**

Local Rule 1 of the Court of Appeal, Third Appellate District, established the Appellate Mediation Program. The Program is administered by the Coordinator. (Appendix 1.)

#### **Mediation Files are Separate from Court of Appeal file:**

All mediation-related correspondence is kept confidential and maintained by the Program staff at the Program facility.

## STEPS LEADING TO ASSESSMENT FOR THE MEDIATION PROGRAM

### Notice of Appeal Filed in Trial Court:

In order for an appeal to be assessed for placement in the Program, a notice of appeal must be filed in the trial court. The filing of a notice of appeal in the trial court stays the preparation of the appellate record (Cal. Rules of Court, rule 8.121).

### Termination of the Suspension of the Appellate Record:

Local Rule 1 is suspended when a civil appeal is identified as not suitable for placement in the Program, the parties' stipulation for placement in the Program is rejected, or mediation of the matter does not resolve all issues on appeal.

In all incidents that render an appeal inactive or not suitable, the Coordinator immediately and simultaneously issues the Court's order terminating suspension of California Rules of Court, rule 8.121.

For purposes of the rules governing procurement of the appellate record, the date of the termination notice is treated as the filing date of the notice of appeal.

### Notice of Appeal Processed by the Court of Appeal and Cal. Rules of Court, rule 8.100(f):

a. Civil Case Information Statement (CCIS), Civil Appeal Mediation Statement (CAMS): On receiving notice of filing a civil notice of appeal from the trial court, the Clerk of the Court of Appeal must promptly mail:

- (1) Appellant's Civil Case Information Statement (CCIS) (Cal. Rules of Court, rule 8.100(f));
- (2) Appellant's Civil Appeal Mediation Statement (ACAMS) (appendix 2);
- (3) Respondent's Civil Appeal Mediation Statement (RCAMS) (appendix 3);

b. Filing of CCIS: Appellant's CCIS is due ten (10) days from the date of notice advising the lodging of the notice of appeal. An original and one copy of appellant's completed CCIS, must be filed with the Court of Appeal. The judgment being appealed and a proof of service of the CCIS must be attached.

c. Filing of ACAMS: Appellant's CAMS (ACAMS) is due ten (10) days from the date of the notice advising the lodging of the notice of appeal. An original and one copy of the ACAMS must be filed with the Court of Appeal. Proof of service of the ACAMS must be attached.

d. Filing of RCAMS: Though not mandatory, Respondent's CAMS (RCAMS) is due ten (10) days from the filing of the ACAMS. If respondent chooses to file the RCAMS, an original and one copy must be filed with the Court of Appeal. Proof of service of the RCAMS must be attached. Filing of the RCAMS is not mandatory. Upon the expiration of the RCAMS filing date, the matter will be transmitted to the Court for initial screening.

**Mediation Coordinator's Confidential Questionnaire:**

On receiving notice of filing a civil notice of appeal in the trial court, the Coordinator, sends **only to appellant** a confidential questionnaire with a self-addressed envelope attached. Appellant must return the questionnaire *to the Coordinator* 10 days from the date of issuance of the questionnaire. (Appendix 4.)

**Mediation Coordinator's Confidential Questionnaire is not served:**

Without exception, appellant's confidential questionnaire is to be returned **only** to the Coordinator. The questionnaire does not require proof of service and no individuals other than the Coordinator and the mediator will be provided with information from, or a copy of, the questionnaire.

**A Civil Appeal is Ready for Assessment:**

Upon filing of the last RCAMS, or the expiration of the date of the filing of the last RCAMS, the appeal is ready to be assessed for mediation suitability.

**ASSESSMENT FOR PLACEMENT IN THE PROGRAM**

**Assessment of Civil Appeals:**

Assessment of each civil appeal as suitable or not suitable for placement in the Program is independently determined by the Coordinator, after an initial screening by a justice of the Court of Appeal.

**Preparation of the Appellate Record Remains Stayed:**

Suspension of the preparation of the record remains in effect, pending filing of the Court's order terminating suspension of the operation of rules governing preparation of the record and mailing of the Coordinator's notice of termination.

**Notification to Parties Regarding Suitability or Non-suitability:**

Upon receipt by the Coordinator of the Court's initial assessment of a matter's suitability or non-suitability for mediation, the Coordinator must:

- a. For matters deemed not suitable, issue the applicable order and notice.
- b. For matters deemed suitable, contact counsel of record and conduct a phone interview for the purpose of further assessing the matter's suitability for mediation and issue, post ancillary assessment, the appropriate order and notice.

**Appeal is Suitable for Mediation:**

If a civil appeal is selected for placement in the Program, immediately upon filing of the Court's order placing the appeal in the Program, the Coordinator furnishes the parties with the contact information for the assigned mediator, and three dates when the mediator is available for a mediation session.

### **Mediation Session Participation is Mandatory:**

If a civil appeal is selected, participation in the mediation is mandatory and failure to comply with the rules can result in monetary sanctions. Suspension of the operation of the rules governing preparation of the appellate record remains in effect until the mediation is complete.

### **Civil Appeal is not Suitable for Mediation:**

If a civil appeal is deemed not suitable for placement in mediation, the Coordinator issues the appropriate order and notice. Termination of the suspension of the rule governing preparation of the appellate record becomes effective on the date of the Coordinator's notice of termination. (Appendix 11.)

The date specified in the Mediation Coordinator's notice terminating suspension of the rules governing procurement of the appellate record is to be treated as the filing date of the notice of appeal. Thereafter, the parties are responsible for properly fulfilling the rules regarding designation and procurement of the record.

## **SCHEDULING THE APPELLATE MEDIATION SESSION**

### **Selection of Mediator:**

After conducting telephonic interviews with counsel for civil appeals initially deemed suitable for mediation the Coordinator selects the mediator. At selection, the mediator receives all pertinent appellate documents. The mediator, after a determination of no conflicts, then notifies the Coordinator of his or her availability to mediate the civil appeal.

### **Coordinator's Selection Notice to the Parties:**

After a determination of suitability for mediation, the Coordinator confers with the mediator to obtain three possible dates for a mediation session. The Coordinator then sends a selection notice indicating the selected dates. Attached to the selection notice, amongst other items, the Coordinator will provide background information on the mediator. (Appendix 6.)

### **Parties Must Agree Upon Mediation Date and Respond:**

Within 10 days after receipt of the dates the mediator is available, all counsel must mutually confer and select a convenient mediation date and immediately notify the Coordinator.

### **Confirmation of the Mediation Date, Time, and Site:**

Immediately upon being notified by the parties and the mediator that a date and time for mediation have been selected, the Coordinator must send to all parties, a notice of confirmation indicating the agreed-upon date, time, and site for mediation.

## CONTINUATION OF MEDIATION SESSION:

### Stipulation Desired:

Upon the Agreement of the mediator and the parties, a mediation session may be continued with permission of the Coordinator.

The mediator, with the approval of the Coordinator, may, for good cause, postpone or continue a mediation session to a date certain. Continuation requires immediate consultation with the Coordinator for availability for the facility and all parties and counsel must agree upon the continuation date. It is desired that continuations be memorialized by stipulation of the parties.

### Record Preparation Remains Suspended:

Continuation of a mediation session does not alter the continued applicability of the provisions of Local Rule 1. The rules governing procurement of the record remain in effect until the mediation is terminated.

## STIPULATION FOR PLACEMENT IN MEDIATION PROGRAM

### The Parties May Stipulate To Be Placed In The Mediation Program:

If a civil appeal is not selected for placement in the Program, the parties may stipulate to placement in the program. The stipulation must be served on the superior court and filed with the Court of Appeal **within 10 days** after issuance of notification that the Court did not select the appeal for the program.

Pursuant to Local Rule 1, upon receipt of the stipulation by the superior court, the provisions of California Rules of Court, rule 8.121, requiring designation of the record and payment of the estimated costs for preparation of the record are suspended.

### The Court Decides on the Stipulation:

A justice of the Court of Appeal will decide whether to accept or reject the stipulation of the parties. The applicability of Local Rule 1, suspending the preparation of the appellate record remain in effect pending notification by the Court of Appeal of its decision to accept or reject the parties' stipulation.

### Stipulation Accepted:

If a stipulation to enter into mediation is accepted, any order terminating the suspension of the rules governing procurement of the record is vacated by order and the stay on preparation of the record remains in effect until mediation proceedings are completed.

### **Scheduling a Stipulated Mediation Session:**

Upon acceptance of the parties' stipulation for placement in mediation, the Coordinator follows the procedures set forth above as if the civil appeal had been initially accepted into the Program: a selection notice will issue, the parties must respond within 10 days, a mediator will be appointed and provided the mediation documentation for the civil appeal, and upon notice of all counsel of an agreed-upon date, a the Coordinator's confirmation notice will issue.

### **Stipulation Rejected:**

If the stipulation is rejected, suspension of the rules governing preparation of the record and payment of the costs is terminated. The Coordinator then immediately and concurrently notifies the parties and the trial court, in writing, of the termination of suspension of rule.

Upon termination of the rule, it is the obligation of the parties and the trial court to comply with the requirements of rule 8.121.

The date specified in the Coordinator's notice of termination is to be treated as the filing date of the notice of appeal.

## **WHO MUST ATTEND MEDIATION**

### **The Mediator Controls who must attend a Mediation Session:**

Any exception to the requirement that all with full authority to settle must attend must be made in writing and the mediator's approval must also be in writing. Any exception to this attendance requirement must be accompanied by a showing of good cause.

### **All Parties and Counsel of Record Must Attend Mediation Sessions:**

If a party is not an individual, then a party representative with full authority to settle all appeals and cross-appeals must attend. If a party has potential insurance coverage, a representative of each insurance carrier whose policy may apply also must attend all mediation sessions in person, with full settlement authority. If the party with full authority to settle is a governmental entity such as a Board of Supervisors or City Council, the member appointed to attend the mediation must carry a declaration of the governmental entity of full authority to settle.

### **The Mediator may Invite Participation by any Additional Person or Entity:**

Invitation of participation by additional persons is subject to the permission of the mediator and only if the mediator concludes participation would facilitate mediation.

### **Additional Documents Needed By Mediator:**

Pursuant to Local Rule 1, "[t]he mediator may require parties or their counsel to furnish information, documents, records or other items specified by the mediator." These documents can include, but not be limited to, informal pre-mediation statements. (Appendix 1.)

## COMPLETION OF MEDIATION

### **Notice of Completion:**

Within 10 days of mediation completion, the mediator must notify the Coordinator, in writing, of the results of the mediation.

### **Disposition of a Civil Appeal by Mediation (Cal. Rules of Court, rule 8.244):**

Any civil appeal that is disposed of by mediation prior to filing of the appellate record requires filing of an abandonment of appeal in the trial court. (Appendix 13.)

### **Appeals Not Disposed of by Mediation:**

Pursuant to Local Rule 1, if completion of mediation does not result in disposition of all issues on appeal, the Coordinator, within 10 days after notice by the mediator that the mediation did not resolve the appellate issues, issues the Court's order terminating suspension of the operation of California Rules of Court, rule 8.121. Simultaneous with the issuance of the Court's order terminating the rules, the Coordinator notifies the parties and the trial court, in writing, that it is the obligation of the parties and the trial court to comply with the requirements of rule 8.121.

The date specified in the Mediation Coordinator's notice of termination is to be treated as the filing date of the notice of appeal.

### **The Mediation Attendance form and Mediator's Statement are Mandatory:**

Within 10 days of completion of mediation, the mediator must send to the Coordinator the completed Mediator's Statement form. (Appendix 9.)

### **Confidential Evaluation by Counsel and Parties is Mandatory:**

Within 10 days of completion of mediation, the parties and counsel must separately send to the Coordinator the completed Confidential Mediation Evaluation form. (Appendix 8.)

## CONFIDENTIALITY AND CONDUCT OF MEDIATORS

### **Confidentiality:**

All parties, counsel and other participants are required to sign a Confidentiality Agreement in a form designated by the court. The Coordinator and all parties, counsel and other participants are bound by law not to disclose information about any appeal. (Appendix 6.)

### **Rules of Conduct for Mediators (Cal. Rules of Court 3.850 et seq.):**

The mediators are bound by the rules of conduct as outlined in the California Rules of Court, rule 3.850 et seq., and in particular rule 3.867 pertaining to complaints relating to mediators, the Mediation Program, or the Mediation Coordinator. Additional training and information regarding mediator-conduct during a mediation session is found in the materials obtained during training.

## COMPLAINT POLICY

### **Appellate Mediation Program Complaint Policy (Cal. Rules of Court, rule 3.867):**

Pursuant to the provisions of California Rules of Court, rule 3.867, the Program's complaint policy is as follows:

"Any person who has participated in the Mediation Program and who has a complaint about a mediator or staff member of the Mediation Program shall put the complaint in writing and deliver it to the Program Coordinator."

"The Program Coordinator shall deliver the complaint forthwith to the justices who serve on the Appellate Mediation Committee. Those justices shall make any investigation of the complaint as they deem appropriate and, in any event, shall personally interview the mediator or staff person who is the subject of the complaint. Thereafter, the justices shall take such action, if any, as is appropriate under the circumstances." (See Appendix 14.)

### **Attendance Sign-in Forms:**

To facilitate the Program Complaint Policy, the Coordinator maintains mediation attendance forms in order to verify that those listed as having full authority to settle attend the mediation session. (Appendices 6 & 7.)

## SANCTIONS

### **Sanctions:**

Money sanctions may be imposed for failure to comply with the rules governing the Mediation Program.

# APPENDICES

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**APPENDIX 1 - LOCAL RULE 1**

**CALIFORNIA COURT OF APPEAL  
THIRD APPELLATE DISTRICT  
LOCAL RULES**

[As amended effective May 29, 2009; as amended effective March 2, 2007; as amended, reorganized, and renumbered effective October 2, 2006; adopted effective January 1, 1977, and previously amended May 1, 1982, December 31, 1982, November 10, 1986, September 4, 1989, and July 6, 1993]

**Rule 1: Mediation in civil appeals**

**(a) Mediation program**

To enable efficient case management and more expeditious resolution of civil appeals, the Court of Appeal, Third Appellate District ("the Court") has a Mediation Program ("Program"). Procedures for mediation and operation of the Program are promulgated by the Court of Appeal Mediation Program Committee ("Committee").

**(b) Mediation program administration**

The Program is administered by a Mediation Program Coordinator ("Coordinator") acting under the direction of the Committee and under the supervision of the Administrative Presiding Justice or a designated Supervising Associate Justice.

**(c) Scope of mediation program**

- (1) Other than appeals expressly exempt from the Program, a civil appeal will be placed in the Program if selected by the Administrative Presiding Justice or a designated Supervising Associate Justice.
- (2) Any appeal taken from a judgment or order entered in a conservatorship, guardianship, or sterilization proceeding is exempt from the Program.
- (3) With permission of the Court, a civil appeal exempt from, or not selected for, mediation may be placed in the Program by stipulation of the parties in accordance with subparagraph (f)(7).

**(d) Mediation eligibility assessment**

If the Administrative Presiding Justice or a designated Supervising Associate Justice tentatively selects an appeal for the Program, the Coordinator may communicate with counsel and independently assess the appeal for continued inclusion in the Program.

**(e) Costs and fees for mediation services**

- (1) Mediation services are provided to the parties by the Court without fee. Mediators will not charge the parties any fee for the first four hours of the mediation session or sessions.
- (2) After four hours, the parties and the mediator may agree on a fee to be paid by the parties to the mediator to continue the mediation.
- (3) The mediator's preparation time and any time spent in pre-mediation session communications will not be included in the four-hour calculation.

(f) **Mediation process**

(1) **Appellate record**

(A) Effective upon filing of any notice of appeal in a civil case not expressly exempt from the Program, the provisions of rules 8.121, 8.124(a)(1), and 8.216 of the California Rules of Court, requiring designation of the record, payment of estimated costs of preparation of the record, and submission of a proposed briefing schedule, are suspended, pending the Court's decision to select or not to select the appeal for mediation.

(B) These rules do not prohibit the superior court from collecting its deposit required by section 68926.1 of the Government Code and by rule 8.100(b)(2) of the California Rules of Court.

(2) **Duties of the clerk of the court**

(A) Upon receiving notice of filing of a civil appeal in any case that is otherwise appropriate for mediation, the clerk must promptly mail:

(i) to appellant the Civil Case Information Statement form, as required by rule 8.100(f) of the California Rules of Court, and an Appellant's Civil Appeal Mediation Statement form.

(ii) to respondent a Respondent's Civil Appeal Mediation Statement form.

(B) Generally, multiple appeals from the same judgment or a related order are assigned the same appellate case number unless the record for the first notice of appeal has already been filed. (See Advisory Committee Comment to Cal. Rules of Court, rule 8.147.) Subsequent appellant's and respondent's Civil Appeal Mediation Statements will not be required when a second or subsequent notice of appeal has been filed within the same appellate case number.

(3) **Filing of the Appellant's Civil Appeal Mediation Statement**

(A) Within 10 days after the clerk mails the Appellant's Civil Appeal Mediation Statement form, appellant must serve and file the statement.

(B) Failure to timely file either the Appellant's Civil Case Information Statement or the Appellant's Civil Appeal Mediation Statement will result in dismissal of the appeal, without prejudice to reinstatement upon a showing of good cause.

(4) **Filing of the Respondent's Civil Appeal Mediation Statement**

(A) Within 10 days after filing of the Appellant's Civil Appeal Mediation Statement, respondent must serve and file a Respondent's Civil Appeal Mediation Statement.

(B) Failure to timely file a Respondent's Civil Appeal Mediation Statement will result in the appeal being assessed for mediation eligibility without input from the respondent.

(5) **Duties of the coordinator**

(A) The Coordinator must notify the parties whether the appeal has been selected for the Program within 10 days after the respondent files Respondent's Civil Appeal Mediation Statement. If the respondent fails to file a Civil Appeal Mediation Statement, the Coordinator must notify the parties whether the appeal has been selected for the Program within 10 days after Respondent's Civil Appeal Mediation Statement was due to be filed.

(B) The Coordinator will assign mediators to appeals selected for the Program.

(C) The Coordinator may replace a selected mediator upon written request by a party supported by a showing of good cause or upon request of the mediator.

**(6) Case assessment process**

**(A) Cases eligible for mediation**

(i) If an appeal is selected for the Program, the Coordinator will furnish the parties with the name, address, and telephone number of the mediator, and three dates when the mediator is available for the mediation sessions.

(ii) Within 10 days after receipt of notice of the dates the mediator is available, the parties must mutually confer and advise the Coordinator and the mediator of their scheduling preferences.

(iii) If an appeal is selected for the Program, suspension of rules 8.121, 8.124(a)(1), and 8.216 of the California Rules of Court will remain in effect until completion of mediation.

**(B) Cases not eligible for mediation**

(i) If an appeal is not selected for the Program, the Coordinator must concurrently notify the parties, the superior court, and the Court, in writing, that suspension of rules 8.121, 8.124(a)(1), and 8.216 of the California Rules of Court is terminated.

(ii) Upon notification by the Coordinator that an appeal was not selected for the Program, the parties' obligation to comply with the requirements of rules 8.121, 8.124(a)(1), and 8.216 of the California Rules of Court commences as if notice of appeal was filed on the date specified in the notification.

**(7) Stipulation to mediate**

(A) If an appeal is exempt from the Program or is not selected for the Program, the parties may stipulate to placement of the appeal in the Program.

(B) The stipulation must be served on the superior court and filed with the Court within 10 days of filing of notice of appeal. The original signature of at least one party must appear on the stipulation filed in the Court; the signatures of the other parties may be in the form of fax copies of the signed signature page of the stipulation.

(C) Upon receipt of the stipulation by the superior court, the provisions of rules 8.121, 8.124(a)(1), and 8.216 of the California Rules of Court, requiring designation of the record, payment of estimated costs of preparation of the record, and submission of a proposed briefing schedule, are suspended.

(D) The Court will decide whether to accept the stipulation and place the appeal in the Program.

(E) If the appeal is selected for the Program, suspension of rules 8.121, 8.124(a)(1), and 8.216 of the California Rules of Court must remain in effect until completion of mediation.

(F) If the appeal is not selected for the Program, the Coordinator must concurrently notify the parties, the superior court, and the Court, in writing, that suspension of rules 8.121, 8.124(a)(1), and 8.216 of the California Rules of Court is terminated.

(G) Upon notification by the Coordinator that the appeal was not selected for the Program, the parties' obligation to comply with the requirements of rules 8.121, 8.124(a)(1), and 8.216 of the California Rules of Court commences as if notice of appeal was filed on the date specified in the notification.

**(8) Continuation of mediation sessions**

The mediator, with approval of the Coordinator, may, for good cause, continue a mediation session to a date certain.

**(9) Mediator communications with parties and counsel**

(A) The mediator may at any time communicate with any of the parties or their counsel with or without notice to the other parties or their counsel.

(B) The mediator may require parties or their counsel to furnish information, documents, records, or other items specified by the mediator.

**(10) Full authority to settle**

(A) Counsel, parties, and persons with full authority to settle the appeal must personally attend the mediation, unless excused in writing by the mediator for good cause. If any consent to settle is required for any reason, the party or person with that consensual authority must be personally present at the mediation.

(B) If a party has potential insurance coverage applicable to any of the issues in dispute, a representative of each insurance carrier whose policy may apply must attend all mediation sessions in person, with full settlement authority. The party with such potential insurance coverage and that party's counsel shall serve timely notice to each insurance carrier with potential insurance coverage informing the carrier: (i) that appellate mediation has been ordered; (ii) that the carrier must have a representative with full settlement authority attend all mediation sessions in person; and (iii) of the date, time, and place of all mediation sessions. (See *Campagnone v. Enjoyable Pools & Spas Service & Repairs, Inc.* (2008) 163 Cal.App.4th 566.)

(C) The mediator may invite participation by any additional person or entity if the mediator concludes that such participation would facilitate mediation.

**(11) Completion of mediation**

(A) Within 10 days after completion of mediation, the mediator must submit to the Coordinator a Mediation Attendance Form, listing all participants in the mediation, and a Mediator's Statement, notifying the Coordinator of the results of the mediation.

(B) Within 10 days after completion of mediation, the parties and their counsel must separately complete and submit to the Coordinator confidential evaluations of the mediation and the mediator on a form provided by the Coordinator.

**(12) Appeal not resolved by mediation**

(A) If completion of mediation does not result in disposition of the appeal, the Coordinator must, within 10 days after notice of completion of the mediation, concurrently notify the parties, the superior court, and this Court, in writing, that suspension of rules 8.121, 8.124(a)(1), and 8.216 of the California Rules of Court is terminated.

(B) The parties' obligation to comply with the requirements of rules 8.121, 8.124(a)(1), and 8.216 of the California Rules of Court commences as if notice of appeal was filed on the date specified in the notification.

**(13) Appeal resolved by mediation**

(A) Pursuant to California Rules of Court, rule 8.244(a) and (b), if the mediation results in a disposition of the appeal, and the record has not been filed in the Court, the appellant must promptly file a notice of settlement with the Court and, within 45 days thereafter, file an abandonment of the appeal in the superior court.

(B) Pursuant to California Rules of Court, rule 8.244(a) and (c), if the mediation results in a disposition of the appeal, and the record has been filed in the Court, the appellant must promptly file a notice of settlement in the Court and must, within 45 days thereafter, serve and file in the Court a request for dismissal of the appeal.

**(g) Confidentiality**

(1) Except as otherwise required by law, information disclosed to the mediator, the parties, counsel, or any other participant in the mediation including the Coordinator, is confidential.

(2) The parties and the mediator must sign a confidentiality agreement in a form designated by the Court.

**(h) Ethical Standards**

Mediators must adhere to the rules of conduct for mediators in court-sponsored mediation programs for civil cases, as set forth in the California Code of Civil Procedure and the California Rules of Court.

**(i) Sanctions**

Monetary sanctions may be imposed following a noticed motion by a party seeking sanctions for failure to comply with the rules or upon the Court's own motion.

*(As amended, eff. October 2, 2006. As amended, eff. March 2, 2007; \_\_\_\_\_, 2009.)*

**APPENDIX 2  
APPELLANT'S CIVIL APPEAL MEDIATION  
STATEMENT**

<b>Court of Appeal</b> <b>Third Appellate District</b>		TRIAL COURT CASE NUMBER <hr/> COUNTY: <hr/>
Appellate Case No: _____		For Court Use Only
ATTORNEY (Name, State Bar Number, Address)		
Telephone No: Attorney For:		
APPELLANT:		
RESPONDENT:		
<b>APPELLANT'S CIVIL APPEAL MEDIATION STATEMENT</b>		

*(USE ADDITIONAL SHEETS AS NECESSARY.)*

1. Provide a concise statement of the case, including a brief procedural history and a recitation of facts material to disposition of the issues to be decided on appeal:

2. List the issues you expect to raise on appeal:

Date:

\_\_\_\_\_

*(Print or Type Name)*

\_\_\_\_\_

*(Signature of Attorney)*

\*\*\*A proof of service of this document on all counsel, prior to filing, must be attached.

**NOTES:** Recognizing the appellate record has not yet been prepared and that counsel and parties may not yet be able to identify all appellate contentions, the Court will not deem an omission from this Statement to be a waiver or forfeiture of any claim on appeal.

This form is also online in fillable form at <http://www.courtinfo.ca.gov/courts/courtsofappeal/3rdDistrict/mediation.htm>. Questions about the Appellate Mediation Program should be directed to the Appellate Mediation Coordinator at 916-274-5895. For general information about your appeal, please contact the clerk's office of the Third District Court of Appeal at 916-654-0209, or visit its web site at <http://www.courtinfo.ca.gov/courts/courtsofappeal/3rdDistrict>.

**APPENDIX 3 -  
RESPONDENT'S CIVIL APPEAL MEDIATION  
STATEMENT**

<b>Court of Appeal Third Appellate District</b>		TRIAL COURT CASE NUMBER _____ COUNTY: _____
Appellate Case No: _____		For Court Use Only
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, Address)		
Telephone No: Attorney For: APPELLANT:		
RESPONDENT:		
<b>RESPONDENT'S CIVIL APPEAL MEDIATION STATEMENT</b>		

**NOTE:** Ten days after filing of the appellant's Civil Appeal Mediation Statement, respondent may serve and file its completed Civil Appeal Mediation Statement (Local Rule 1).

*(USE ADDITIONAL SHEETS AS NECESSARY.)*

1. Provide any additions or corrections to the statement of the case as set forth in the appellant's Civil Appeal Mediation Statement:

2. Respond briefly to the items identified by appellant as issues raised on appeal in the appellant's Civil Appeal Mediation Statement:

Date:

\_\_\_\_\_  
*(Print or Type Name)*

\_\_\_\_\_  
*(Signature of Attorney)*

\*\*\*A proof of service of this document on all counsel, prior to filing, must be attached.

**NOTES:** Recognizing the appellate record has not yet been prepared and that counsel and parties may not yet be able to identify all appellate contentions, the Court will not deem an omission from this Statement to be a waiver or forfeiture of any claim on appeal.

This form is also online in fillable form at <http://www.courtinfo.ca.gov/courts/courtsofappeal/3rdDistrict/mediation.htm>. Questions about the Appellate Mediation Program should be directed to the Appellate Mediation Coordinator at 916-274-5895. For general information about your appeal, please contact the clerk's office of the Third District Court of Appeal at 916-654-0209, or visit its web site at <http://www.courtinfo.ca.gov/courts/courtsofappeal/3rdDistrict>.

**APPENDIX 4  
MEDIATION COORDINATOR'S  
CONFIDENTIAL QUESTIONNAIRE  
TO APPELLANT**

<b>Court Of Appeal, Third Appellate District APPELLATE MEDIATION PROGRAM</b>		TRIAL COURT CASE NUMBER _____
Appellate Case No: _____		COUNTY: _____
ATTORNEY (Name, State Bar Number, Address)		For Court Use Only
Telephone No: Attorney For:		
APPELLANT:		
RESPONDENT:		
<b><u>MEDIATION COORDINATOR'S CONFIDENTIAL QUESTIONNAIRE TO APPELLANT</u></b>		

**NOTE:** This Questionnaire is confidential and for use only by the Mediation Coordinator and the selected mediator. This Questionnaire will not be made available to opposing counsel, the parties, or to any member or employee of the Court other than the Coordinator and assigned mediator. Please return this form only to: Anne Meline, Mediation Coordinator, 2890 Gateway Oaks Drive, Suite 210, Sacramento, CA 95833-4326 (self-addressed envelope enclosed).

\*\*\*\*

1. Identify any attempt at alternative dispute resolution undertaken previously (e.g., mediation, arbitration, or settlement conferences):
  
2. What was your last settlement demand?
  
3. What was respondent's last settlement offer?
  
4. Identify all persons, other than the parties, whose agreement is necessary for the settlement of this case (e.g., an insurance adjuster, spouse, or lien holder):
  
5. Please set forth any additional information that would be helpful to the mediator.

Date:

\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Signature of Attorney)

(You may use additional pages, if necessary.)

**NOTE:** This form is to be mailed only to the Mediation Program Office. Questions regarding this form must be directed only to the Appellate Mediation Program Office at 916-274-5895. This form is **NOT** available online; please contact [Rene.Ackerman@tad.ca.gov](mailto:Rene.Ackerman@tad.ca.gov) for a Word version of this form. For general information concern the Court of Appeal, Third Appellate District, visit the website at <http://www.courtinfo.ca.gov/courts/courts-of-appeal/3rd-District/>

**APPENDIX 5**  
**COURT ORDER PLACING MATTER**  
**INTO APPELLATE MEDIATION**

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
**THIRD APPELLATE DISTRICT**

NATIONAL COMPANY OR INDIVIDUAL  
Plaintiff and Appellant,  
v.  
OTHER COMPANY OR INDIVIDUAL  
Defendant and Respondent.

C012345  
XYZ County  
No. 45678

BY THE COURT:

The above case is ordered into mediation. The Mediation Program Coordinator will contact the parties to schedule the mediation. All parties with full authority to settle the matter must appear at the mediation session. Pursuant to Local Rule 1, the provisions of rule 8.121, 8.124(a)(1) and 8.216 of the California Rules of Court, requiring designation of the record on appeal, payment of estimated costs of preparation of the record on appeal, and submission of a proposed briefing sequence, remain suspended.

Dated:

HULL, Acting P.J.

---

cc: See Mailing List

**APPENDIX 6  
MEDIATOR APPOINTMENT NOTICE  
AND PACKET OF INFORMATIONAL DOCUMENTS  
INCLUDING:**

- **PRE MEDIATION PHONE CONFERENCE AGENDA**
- **MEDIATION PROGRAM INFORMATION SHEET  
(SHORT VERSION)**
- **CONFIDENTIALITY AGREEMENT**
- **PRE-MEDIATION SESSION ATTENDANCE SHEET**
- **“PREPARING FOR APPELLATE MEDIATION”**
- **MEDIATOR’S BIOGRAPHICAL INFORMATION**



**COURT OF APPEAL  
THIRD APPELLATE DISTRICT  
APPELLATE MEDIATION PROGRAM  
2890 GATEWAY OAKS DRIVE, SUITE 210  
SACRAMENTO, CA 95833**

ARTHUR G. SCOTLAND, PRESIDING JUSTICE  
HARRY HULL, JR., ASSOCIATE JUSTICE  
AND APPELLATE MEDIATION COMMITTEE CHAIR  
ANNEK. MEUNE, PROGRAM COORDINATOR  
RENE ACKERMAN, JUDICIAL SECRETARY  
PHONE: 916-274-5862  
FAX: 916-641-6527  
EMAIL: ANNE.MEUNE@JUD.CA.GOV  
RENE.ACKERMAN@JUD.CA.GOV

April 12, 2010

COUNSEL  
FIRM  
ADDRESS  
CITY, STATE

**NOTICE OF APPOINTMENT OF MEDIATOR**

COUNSEL  
FIRM  
ADDRESS  
CITY, STATE

Re: **C012345 COMPANY v COMPANY**  
County No. 45678

Dear Counsel:

Pursuant to this court's order of       DATE       and Local Rule 1 http://www.courts.ca.gov/courts/courtsappellate3rdDistrict/developed.htm, your case has been **selected** for mandatory mediation. **MEDIATOR NAME, Esq.**, has been assigned to serve as your mediator. Pursuant to Local Rule 1, all proceedings in this appeal are **stayed**. The provisions of Local Rule 1 will remain in effect until completion of mediation.

Your mediation session will take place as follows at the Appellate Mediation Program Office located at 2890 Gateway Oaks Drive, Suite 210, Sacramento, California. Your mediator has provided the following possible mediation session dates (pick one):

June 2, 2010 @ 9:30 a.m.	)	Please meet, confer, and select one (1)
June 3, 2010 @ 9:30 a.m.	)	session date by close of business
June 10, 2010 @ 9:30 a.m.	)	10 DAYS FROM NOTICE DATE

- Your mediator will be requesting informal mediation statements **not to exceed 10 pages in length** the substance and timing of which will be addressed during the first phone conference (there **WILL** be additional phone conferences, the dates as yet unknown).

Prior to the mediation session date, your mediator will conduct a pre-mediation session phone conference. Your mediator is available as follows. *Counsel are to meet and confer and choose from the following selection:*

- **DATES/TIMES OFFERED FOR PRE MEDIATION CONFERENCE DALL**
- By close of business 10 DAYS FROM NOTICE, please *meet, confer, and inform* your mediator of the most convenient date and time.
- Please reserve at least one hour for this conference.
- Your mediator's Meeting Bridge Call-in number is 866-640-4044 (Toll Free).
- Your mediator's Participant code is 7569542.
- Meeting Bridge website: [http://www.meetingbridge.com/Quick\\_Start.aspx](http://www.meetingbridge.com/Quick_Start.aspx).
- Your mediator's contact information: email \_\_\_\_\_; fax \_\_\_\_\_ phone \_\_\_\_\_

Please note that participation in mediation is mandatory. Under Local Rule 1, you, your client, and, if applicable, all representatives with full authority to settle must attend the mediation session. Any changes in either dates or who will attend the mediation session require 48 hours' notice directly to your mediator and require consultation with the Mediation Coordinator.

- **Failure to comply with the requirements of this notice and Local Rule 1 can result in monetary sanctions.**
- If your client is responsible to a higher authority, such as a Board of Supervisors or agency executive, the appropriate representative with full authority to settle must attend.
- If your client has any insurance coverage applicable to any issues in the case, in addition to your client, representatives of all insurance carriers whose policies may apply must also be present with full authority to settle.
- Attending insurance carrier representatives must have full authority to make all decisions relative to the policy including, if necessary and appropriate, to commit the full policy limits toward a disposition of this case.
- If there are parties or entities (including insurance carriers) from other trial proceedings with a financial interest in any settlement agreement, they must be notified and represented at the mediation session, or a written waiver must be provided to the mediator and the mediation office.
- The mediator's approval of such waiver is required in order to avoid sanctions for violation of Local Rule 1. (Please see *Robert Campagnone et al v. Enjoyable Pools & Spas Service & Repairs, Inc., et al.* (2008) 163 Cal. App. 4th 566.)

To ensure that all required participants attend the mediation, the attached attendance sheet must be completed and submitted to the mediation coordinator by one week prior to the selected mediation session. Failure to attend the mediation session is a violation of Local Rule 1 and may result in monetary sanctions. (*Robert Campagnone et al v. Enjoyable Pools & Spas Service & Repairs, Inc., et al., supra.*)

- Any request for a change in who attends the mediation requires the mediator's permission and must be submitted to the mediator by **48 hours prior to the selected mediation session date.**

The **first four (4) hours** of mediation time is furnished to all parties without fee. If a resolution is not reached within this time, the parties may agree to continue the mediation on a fee basis. If the parties agree to continue mediation, they also must agree to compensate the mediator for the additional time at the mediator's hourly rate, **paid equally by the parties.** *During the pre-mediation phone conference, please be prepared to discuss and establish a contract, if necessary, regarding financial arrangements for mediation services in excess of 4.0 hours.*

A mediation session consists of four **consecutive** hours (excluding any recess to accommodate lunch or other meals), unless the mediator grants an exception. All parties and counsel are to adjust their calendars accordingly. Independent and unnoticed changes in mediation dates are not permitted.

Pursuant to Local Rule 1 and consistent with California Evidence Code sections 703.5 and 1115 through 1128, all participants in a mediation session are required to sign a Confidentiality Agreement. In part, that agreement provides as follows: "(1) No written or oral communication made by any party, attorney, mediator, or other participant in any mediation session in this case may be used for any purpose in any pending or future non-criminal proceeding . . . , [and] (2) The parties shall not subpoena the mediator, the mediation coordinator, or any documents submitted to or prepared by the mediator during or in connection with the mediation process. . . ." (A Confidentiality Agreement is attached.)

Please do not hesitate to contact the program office at **916-274-5882** if you have questions or concerns.

Very truly yours,  
*Anne K. Meline*  
 ANNE K. MELINE  
 Appellate Mediation Coordinator

Enclosures  
 cc: Mediator

## PRE-MEDIATION PHONE CONFERENCE PRELIMINARY AGENDA

In order to expedite the timely completion of the mediation and to enhance the likelihood of a successful resolution of this matter, a telephone conference with counsel only is scheduled. A toll-free, conference service has been retained for this conference. If you are not available for this conference, please coordinate your schedule with the other counsel and **immediately contact your mediator.**

During the phone conference, among other topics, you will discuss the following:

- Confirmation of the mediation session date, time and location;
- Discussion of potential conflicts of interest;
- Confidentiality of the mediation process;
- Assurance that ALL participants in the mediation session **WILL HAVE FULL AUTHORITY TO SETTLE;**
- The chances of resolving the case by mediation now, and how to maximize them;
- Other disputes that could be resolved in this mediation;
- Other, unresolved disputes that might present a barrier to settlement
- The parties who must be present -- i.e., any and all with full authority to settle the matter;
- Informal written mediation statements -- format, information required, and due-date;
- The format of the mediation and role of the mediator -- what to expect during mediation session;
- **Fees in the event the mediation exceeds the four pro bono hours provided by the Court;**
- **Any contract for fees for mediation services exceeding 4 hours; and**
- **Any questions you have about the Mediation Program.**

Consistent with the Mediation Program's Local Rule, your mediator will donate up to four hours of mediation session time. In the event the appeal is not resolved within that time, and the parties agree to continue on a voluntary basis, an hourly fee, paid by the parties, will be charged for additional time. The facility will be available for the entire day upon which the mediation session is scheduled, however, any financial arrangement between the mediator and the parties for paid mediation is not a court-supervised event. **Please be sure that you understand exactly what your financial obligation will be in the event of a mediation that exceeds 4.0 hours.**

Follow up dates -- if needed -- would be discussed at the appropriate time.

During the phone conference, please be prepared to fully discuss your client's needs, preferences, scheduling considerations, whether your client requires special accommodation, and any other information that might play a critical role in mediating the case. Your mediator will likely pursue individual conferences with each of you at a future, conveniently-scheduled time.

**Your mediator, upon assignment, will provide you with additional conference call information.**

**MAILING LIST**

**Re: C063795 Alvarez v. Alvarez  
Sacramento County No. 34200800003937PRTRFRC**

**Copies of the attached document have been sent to the individuals checked below:**

**Counsel  
Address  
Fax, phone, email**

**Counsel  
Address  
Fax, phone, email**

**MEDIATOR  
ADDRESS  
FAX, PHONE, EMAIL  
participant code  
Meeting Bridge Call-in number is 866-640-4044 (Toll Free).**

**Court Of Appeal, Third Appellate District**  
**Appellate Mediation Program**  
**Mediation Information Sheet**

<http://www.courtinfo.ca.gov/courts/courtsofappeal/3rdDistrict/mediation.htm>

**History**

The Court of Appeal, Third Appellate District, launched its Appellate Mediation Program in October 2006 as a method to speed the case resolution process and to reduce costs to the litigants and the Court. Pursuant to Local Rule 1 of the Court of Appeal, Third Appellate District, **any civil appeal lodged with the Court**, is subject to review for placement in mandatory mediation, and the California Rules of Court rules governing the preparation of the appellate record are suspended pending review of the appeal for amenability to appellate mediation. .

**What is mediation**

Mediation is an informal, *confidential* process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator helps the parties explore options and arrive at a mutually acceptable resolution of the dispute. The mediator does not resolve the dispute. The parties do.

**Advantages of appellate mediation**

- Avoids the risk of reversal.
- Avoids financial risk.
- Creates best opportunity for mutually satisfying solution.
- Saves money.
- Saves time.
- Provides greater client participation.
- Reduces stress.

**Is my case likely to be mediated**

Although some disputes require an appellate decision, almost any dispute can be resolved through mediation. Parties and counsel, when assessing their chances on appeal might benefit by considering mediation as an alternative.

**How is my mediator selected?**

The court has recruited experienced mediators and appellate specialists, based on their training, experience, and appellate expertise. Parties who prefer to use a private mediator may do so but are asked to inform the Mediation Program Coordinator.

**Do I need to pay fees?**

The Third District provides, without fee to the parties, the first four hours of a mediation session. Any mediation session that exceeds four hours may be terminated by the mediator, or continued **by agreement** with the parties, at the mediator's hourly rate, **paid by the parties**. *Financial arrangements for any paid mediation will be outlined by the mediator during the pre-mediation phone conference.* Mediators on the Court panel do not charge parties for lunch breaks during mediation session or phone consultations with the Mediation Program Coordinator.

**What about the appellate record?**

To save the parties money and time, all subsequent requirements regarding the preparation of the record are stayed pending completion of mediation.

**How will I know my case is to be mediated?**

Upon filing of the final Respondent's Civil Appeal Mediation Statement, the appeal is ready for evaluation for amenability for mediation.

If a case is selected, counsel will be contacted by the mediation program with instructions, assignment of a mediator, and scheduling of a confidential mediation session.

If a case is not selected, by notice and order of the Court, suspension of the rules governing the preparation of the trial court record is terminated. The appeal then proceeds as if the notice of appeal had been filed on the date indicated on the **Mediation Program** notice that accompanies the Court of Appeal order removing the appeal from the Mediation Program.

### **What happens during mediation?**

Mediation begins with a pre-mediation phone conference between counsel and the mediator weeks before the clients and counsel meet face to face. Thereafter, the actual mediation session usually begins with a joint session where all parties are present in one room so the parties can hear each other's points of view. After the joint session, if desirable, the parties adjourn to separate rooms, with the mediator dividing his or her time equally between the groups.

### **What happens when a mediation session is over?**

Mediation sessions that do not resolve all issues on appeal result in the appeal are immediately ordered back on the appellate track and the suspension of the California Rule of Court governing the preparation of the appellate record is terminated. Parties then proceed as if the notice of appeal had been filed upon the date of the order and its accompanying notice of termination.

Mediation sessions that do resolve all issues on appeal require filing of an abandonment of appeal by appellant in the trial court, or filing by appellant of a notice of settlement in the Court of Appeal, followed by a request for dismissal of the appeal. (Cal. Rules of Court, rule 8.244; [http://www.courtinfo.ca.gov/rules/index.cfm?title=eight&linkid=rule8\\_244](http://www.courtinfo.ca.gov/rules/index.cfm?title=eight&linkid=rule8_244))

### **What is Expected of Counsel in a Mediation?**

When preparing for a mediation session, counsel must thoroughly study the case files and be able fully to discuss the facts of the case as well as the applicable law. In addition, counsel should educate the client on the mediation process and on what to expect during mediation. Furthermore, counsel should help the client understand his or her role in the decision-making process by helping the client understand his or her interests and the interests of the other party. Finally, counsel should explore possible mediation solutions with his or her client and arrive at the mediation session with resolution plans or options in mind.

### **Who Must Attend a Mediation?**

Without exception, all with full authority to settle must attend including but not limited to parties, counsel, individuals with an economic interest in settlement, insurance carriers, and any responsible entities or persons without whom settlement cannot be attained.

**Failure to comply with the requirements of this notice and Local Rule 1 may result in monetary sanctions.** If your client is responsible to a higher authority, such as a Board of Supervisors or agency, the appropriate representative with full authority to settle must attend.

If your client has insurance coverage applicable to any issues in the case, in addition to your client, representatives of all insurance carriers whose policies may apply must also be present. Attending insurance carrier representatives must have full authority to make all decisions relative to the policy including, if necessary and appropriate, *to commit the full policy limits toward a disposition of this case.*

If there are parties from other trial proceedings with a financial interest in any settlement agreement, they **must** be represented at the mediation session, or a written waiver must be provided to the mediator and the mediation office for approval. (Please see *Robert Campagnone et al v. Enjoyable Pools & Spas Service & Repairs, Inc., et al.* (2008) 163 Cal. App. 4th 566.)

### **Contact Information**

For further information on how to become a mediator for the program or on the mediation process, please contact the Mediation Program Office by phone (916) 274-5895 or email [Rene.Ackerman@jud.ca.gov](mailto:Rene.Ackerman@jud.ca.gov).

# Confidentiality Agreement

## Court Of Appeal, Third Appellate District Civil Appeal Mediation Program

PURSUANT TO LOCAL RULE 1, ORIGINAL SIGNATURES OF ALL PARTICIPANTS ON THIS FORM IS MANDATORY. THE FORM MAY BE MAILED TO THE MEDIATION PROGRAM OFFICE PRIOR TO THE SCHEDULED MEDIATION SESSION, OR PARTICIPANTS MAY SIGN THE FORM UPON ARRIVING AT THE SCHEDULED MEDIATION SESSION. ALL CONFIDENTIALITY AGREEMENTS ARE MAINTAINED IN THE CASE MEDIATION FILE AT THE MEDIATION FACILITY.

Today's Date: \_\_\_\_\_.

Court of Appeal Case No.: \_\_\_\_\_.

Case Caption: \_\_\_\_\_.

Mediation Session Date: \_\_\_\_\_ Follow-up Session Dates: \_\_\_\_\_ & \_\_\_\_\_.

Consistent with California Evidence Code sections 703.5 and 1115 through 1128 and Court of Appeal, Third Appellate District, Local Rule 1, the participants in the mediation of this case agree that:

1. No written or oral communication made by any party, attorney, mediator, or other participant in any mediation session in this case may be used for any purpose in any pending or future non-criminal proceeding unless all parties, including the mediator, so agree.
2. Disclosure of information that otherwise is privileged shall not alter its privileged character.
3. The parties shall not subpoena the mediator or any documents submitted to or prepared by the mediator during or in connection with the mediation process. The mediator shall not testify voluntarily on behalf of a party.
4. This agreement shall not preclude a report of information to the program coordinator pursuant to Local Rule 1 or an inquiry by the coordinator regarding a possible violation of Local Rule 1 not involving anything said or any writings introduced in a mediation session.
5. Issues that are strictly confined to matters of mediation session attendance are not subject to this confidentiality agreement. (Please see *Robert Campagnone et al v. Enjoyable Pools & Spas Service & Repairs, Inc., et al.* (2008) 163 Cal. App. 4th 566.)
6. This agreement shall not render inadmissible a written settlement agreement reached as a result of this mediation in any trial court action to enforce that settlement.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mediator

### PARTICIPANTS

\_\_\_\_\_  
Party's Attorney

\_\_\_\_\_  
Party's Attorney

\_\_\_\_\_  
Party

\_\_\_\_\_  
Party

\_\_\_\_\_  
Party's Attorney

\_\_\_\_\_  
Party's Attorney

\_\_\_\_\_  
Party

\_\_\_\_\_  
Party

\_\_\_\_\_  
**Party's Attorney**

\_\_\_\_\_  
**Party**

**OTHER PARTICIPANTS**

\_\_\_\_\_  
**Other Participant**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Representing (specify party)**

\_\_\_\_\_  
**Other Participant**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Representing (specify party)**

\_\_\_\_\_  
**Other Participant**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Representing (specify party)**

\_\_\_\_\_  
**Other Participant**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Representing (specify party)**

NOTE: Original signatures are required. Multiple forms may be provided to the Program Office if needed. Or, all participants can sign the form upon arrival at the scheduled mediation session.

**PRE-MEDIATION SESSION ATTENDANCE SHEET**  
**Civil Appeal Mediation Program**  
**Court Of Appeal, Third Appellate District**

**PURSUANT TO LOCAL RULE 1 AND CALIFORNIA RULES OF COURT, RULE 1622, ALL PARTICIPANTS (PARTIES, COUNSEL AND PARTY-REPRESENTATIVES) IF APPLICABLE, TO THE MEDIATION SESSION HELD MUST SIGN IN BELOW.**

Date of Mediation: \_\_\_\_\_ Case Caption: \_\_\_\_\_

Mediator's Name: \_\_\_\_\_ Phone No. \_\_\_\_\_

**ALL PARTIES LISTED BELOW HAVE FULL AUTHORITY TO SETTLE**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

**ATTORNEYS**

Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_

Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_

Representing: \_\_\_\_\_

Representing: \_\_\_\_\_

Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_

Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_

Representing: \_\_\_\_\_

Representing: \_\_\_\_\_

Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_

Name: \_\_\_\_\_  
Business Address: \_\_\_\_\_

Representing: \_\_\_\_\_

Representing: \_\_\_\_\_

\*Please note: If your client has insurance coverage applicable to any issues in the case, in addition to your client, representatives of all insurance carriers whose policies may apply must also be present. Attending insurance carrier representatives must have full authority to make all decisions relative to the policy including, if necessary and appropriate, to commit the full policy limits toward a disposition of this case.

Please indicate whether an insurance carrier is applicable to your case by checking "yes" or "no" and provide your signature below. If "yes" please provide the insurance carrier's information below.

Yes \_\_\_\_\_ No \_\_\_\_\_ Signature of Counsel: \_\_\_\_\_

Yes \_\_\_\_\_ No \_\_\_\_\_ Signature of Counsel: \_\_\_\_\_

**OTHER PARTY REPRESENTATIVES**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Representing: \_\_\_\_\_

**IMPORTANT: To maintain confidentiality, please return the signed Mediation Session Sign-In Sheet to the Appellate Mediation Coordinator. Please use additional pages if necessary.**

# Court Of Appeal, Third Appellate District

## CIVIL APPEAL MEDIATION PROGRAM

### Preparing for Appellate Mediation<sup>1</sup>

#### Before Mediation

##### *Explain the mediation process.*

Discuss with your client the differences between litigation and mediation, and the roles of the parties, counsel, the mediator, and any other participant in the mediation process. While most mediators open the mediation session by giving the participants a “road map” of anticipated procedures, your discussion before the mediation can put the client at ease with the process. A good starting point is a definition of mediation.

*Mediation is an informal, confidential process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all face. The mediator helps the parties explore options and arrive at a mutually acceptable resolution of the dispute.*

##### *Help your client understand the client's interests.*

A successful mediation resolves a dispute by finding a solution that best meets the parties' individual and joint interests. If you broaden your discussions with your client beyond the legal issues and the *position* the client wishes to take to include the client's underlying *interests*, you increase the probability of a satisfactory result. Many clients initially focus on positions, e.g., “He should pay for the money I lost when he breached our agreement,” rather than interests. One of the client's interests may be monetary, but there may be other interests of equal or greater value, like maintaining a favorable personal, employment, or business relationship or ending litigation so the client can get on with his or her life or business. The client's interests should be prioritized.

##### *Help your client understand the other parties' interests.*

Other parties also have interests underlying their positions. Those interests may be the same as your client's, e.g., maintaining or improving an ongoing relationship or saving time and money. Even if the other parties' interests differ from your client's, they may not be conflicting. Put your client in the other parties' shoes and try to understand their interests. Prepare questions to ask the other parties to bring out those interests.

##### *Explore options for resolving the dispute.*

Once there is an understanding of everyone's interests, explore possible resolutions that will meet those interests. Instead of focusing solely on money, explore with your client creative ways to expand the pie. For example, if it is in the parties' mutual interest to preserve a good business relationship, the respondent may be willing to accept less than the trial judgment for more favorable contract terms. Options should be tested against practical and legal realities. Does a possible resolution meet the interests of the parties? Will a proposed resolution hold up? Effective preparation also requires thorough discussion of the client's alternative to settlement and the risks involved. What is the likelihood that a judgment will withstand appellate review? What legal and practical problems do you anticipate on appeal? What will it cost in time and money? Often a party that prevails on appeal merely wins an opportunity to return to the trial court and face more expense and delay.

#### During Mediation.

The mediator is likely to follow a similar process that you use in preparing the client: discussing the parties' understanding of the dispute, their interests, and possible resolutions.

---

<sup>1</sup> Reproduced With The Permission Of And Provided By: Dana Curtis Mediation.

***Make sure that all decision-makers participate.***

Often persons other than the client may have interests that must be considered in there solution of the dispute. That person may be a spouse, an insurance representative, or a company manager, for example. Mediation is unlikely to be successful without the participation of all persons with authority to resolve the dispute.

***Get the client's story out.***

After the mediator discusses the process, the parties and their attorneys normally are asked to state their understanding of the dispute to each other and to the mediator. This may be the parties' first opportunity to discuss the dispute directly with one another. While your legal expertise enables you to address legal issues and arguments most effectively, often your client is best able to discuss the history of the dispute and the interests that must be met by an agreement.

***Listen.***

Careful listening to the discussion of the dispute by the participants usually will bring understanding of the parties' interests and suggest options for resolution. Stress to your client that understanding the other side does not necessarily mean agreement.

***Focus on problem solving.***

Unlike litigation or arbitration, mediation is designed to be a collaborative process. The parties, with the assistance of the mediator, work together to resolve their dispute in a way that will best meet their mutual interests. Keep this objective in mind when confronting obstacles to resolution that may arise during the course of the mediation.

**After Mediation.**

***Finalize any agreement.***

If an agreement, in whole or in part, is reached at the mediation, the mediator or counsel may write down the key points for formal drafting after the session. Be sure that any formal document accurately reflects the agreements reached at mediation and that the document is executed in a timely manner before memories fade or minds change.

***File an abandonment of the appeal.***

When the case is settled, the appellant should file an abandonment of the appeal. The mediation office can provide a simple form for this purpose. *See* CRC 8.244.



*ography*

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Address, Contact Information

Rev. Feb. 2008

## APPELLATE MEDIATION PROGRAM DRIVING DIRECTIONS



- **Interstate 5 (North):** Traveling from Los Angeles, Modesto, Stockton, Elk Grove or Downtown Sacramento: Take I-5 North. Exit on West El Camino Avenue off of I-5 - stay in left lane of the exit ramp. Turn left at the signal and go over the freeway. Turn right at Gateway Oaks Drive (first signal).
- **Interstate 5 (South) (Airport):** Traveling from Redding, Woodland and Marysville area: Take I-5 South to I-80 West toward San Francisco. Exit on West El Camino Avenue (about one mile) - turn left back over the freeway. Turn left at the second signal, which is Gateway Oaks Drive.
- **Interstate 80 (West):** Traveling from Reno: Take I-80 West toward San Francisco. Exit on West El Camino Avenue - turn left back over the freeway. Turn left at the second signal, which is Gateway Oaks Drive.
- **Interstate 80 (East):** Traveling from San Francisco Bay Area, Fairfield or Davis: Take I-80 Bypass East toward Reno/Sacramento International Airport. Exit on West El Camino Avenue - turn right. Turn left at the second signal, which is Gateway Oaks Drive. Please note, West El Camino Avenue connects I-5 and I-80. That is the correct off-ramp from both those freeways.
- **State Highway 99 (West):** Traveling from Fresno and Central Valley areas: Take Highway 99 North to Business 80 West to I-5 North. Exit on West El Camino Avenue off of I-5 - stay in left lane of the exit ramp. Turn left at the signal and go over the freeway. Turn right at Gateway Oaks Drive (first signal).
- **US Highway 50 (West):** Traveling West on Highway 50 toward Sacramento: Take I-5 North. Exit on West El Camino Avenue off of I-5 - stay in left lane of the exit ramp. Turn left at the signal and go over the freeway. Turn right at Gateway Oaks Drive (first signal).

**APPENDIX 7**  
**MEDIATION SESSION SIGN-IN SHEET**

**CIVIL APPEAL MEDIATION PROGRAM  
COURT OF APPEAL, THIRD APPELLATE DISTRICT  
MEDIATION SESSION SIGN-IN SHEET**

**PURSUANT TO LOCAL RULE 1(d)(12), LOCAL RULE 1(f), AND CALIFORNIA RULES OF COURT, RULE 1622, ALL PARTICIPANTS (PARTIES, COUNSEL AND PARTY-REPRESENTATIVES. IF APPLICABLE, TO THE MEDIATION SESSION HELD \_\_\_\_\_, MUST SIGN IN BELOW.**

Today's Date: \_\_\_\_\_ Court of Appeal Case No.: C0

Case Caption: \_\_\_\_\_

Mediator's Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_

**Counsel**

**Parties**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Representing: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Representing: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Representing: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Representing: \_\_\_\_\_

**Counsel**

**Parties**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Representing: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Representing: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Representing: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Representing: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Representing: \_\_\_\_\_

**OTHER PARTY REPRESENTATIVES**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Representing: \_\_\_\_\_

**APPENDIX 8**  
**MEDIATION EVALUATION**

# Mediation Evaluation

## Court Of Appeal, Third Appellate District

### Appellate Mediation Program

**PURSUANT TO LOCAL RULE 1, THIS FORM IS MANDATORY, MUST BE COMPLETED BY ALL PARTIES AND THEIR COUNSEL, AND WITHIN 10 DAYS OF COMPLETION OF MEDIATION, MUST BE RETURNED TO:**

**ANNE MELINE, APPELLATE MEDIATION PROGRAM COORDINATOR  
2890 GATEWAY OAKS DRIVE, SUITE 210  
SACRAMENTO, CALIFORNIA 95833-4326  
916-274-5882; FAX 916-641-6527**

Please complete this statement without breaching confidentiality.

Today's Date: \_\_\_\_\_

Court of Appeal Case No. \_\_\_\_\_

Case Caption \_\_\_\_\_

Mediator's Name \_\_\_\_\_ Phone No.: \_\_\_\_\_

<b>Type of Case:</b>		
<input type="checkbox"/> Attorney Fees	<input type="checkbox"/> Family Law	<input type="checkbox"/> Personal Injury
<input type="checkbox"/> Business	<input type="checkbox"/> Health Care	<input type="checkbox"/> Probate
<input type="checkbox"/> Contract	<input type="checkbox"/> Housing	<input type="checkbox"/> Professional Negligence
<input type="checkbox"/> Construction	<input type="checkbox"/> Insurance	<input type="checkbox"/> Public Entity
<input type="checkbox"/> Defamation	<input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Real Estate
<input type="checkbox"/> Eminent Domain	<input type="checkbox"/> Landlord/Tenant	<input type="checkbox"/> Securities
<input type="checkbox"/> Employment	<input type="checkbox"/> Medical Malpractice	<input type="checkbox"/> Appellate
<input type="checkbox"/> Labor	<input type="checkbox"/> Partnership	
<input type="checkbox"/> Other (please specify) _____		

**You are:**     appellant                       appellant's attorney                       respondent                       respondent's attorney  
 insurance representative                       Other (specify) \_\_\_\_\_

**How did the case resolve? (Do not reveal confidential information.)**

Direct result of mediation process     Resolution unrelated to mediation process  
 Indirect result of mediation process     No resolution     Other (specify) \_\_\_\_\_

**This section should be completed only by counsel:**

Name of party you represent: \_\_\_\_\_

If case resolved, state length of time between filing of notice of appeal to resolution: \_\_\_\_\_

Did case resolve:     Without preparation of the record                       With preparation of the record

What was the effect of mediation on the following (Insert "ND" if not difference):

Attorney Fees:	<input type="checkbox"/> Reduced fees	<input type="checkbox"/> Increased fees	By how much (estimate)? \$ _____
Other costs:	<input type="checkbox"/> Reduced costs	<input type="checkbox"/> Increased costs	By how much (estimate)? \$ _____
Court time:	<input type="checkbox"/> Reduced time	<input type="checkbox"/> Increased time	By how much (estimate)? _____ months

**On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate the mediation process:**

___ Appropriateness of the process for your dispute	___ Impartiality	___ Fairness	___ Temperament
___ Opportunity to participate	___ Knowledge of mediation process	___ Confidentiality	
___ Knowledge of subject matter	___ Satisfaction with outcome		

**On a scale of 1 to 5 please rate the program administration:**

___ Efficiency (scheduling, etc.)	___ Paperwork
___ Courtesy and cooperation	___ Mandatory participation

Would you use this process again?  Yes  No

Would you use this mediator again?  Yes  No

Comments on the above, including suggestions for program improvements (use extra sheets if necessary):

**IMPORTANT:** To maintain confidentiality, please return to the Appellate Mediation Coordinator.

**APPENDIX 9**  
**MEDIATOR'S STATEMENT**

# Mediator's Statement

## Court Of Appeal, Third Appellate District

### Appellate Mediation Program

TO BE RETURNED WITHIN 10 DAYS OF COMPLETION OF MEDIATION TO:  
 ANNE MELINE, MEDIATION PROGRAM COORDINATOR  
 2890 GATEWAY OAKS DRIVE, SUITE 210  
 SACRAMENTO, CALIFORNIA 95833-4326  
 916-274-5882; FAX 916-641-6527  
 Please complete this statement without breaching confidentiality.

Today's Date: \_\_\_\_\_ Court of Appeal Case No. \_\_\_\_\_

Case Caption: \_\_\_\_\_

Mediator's Name: \_\_\_\_\_ Phone No.: \_\_\_\_\_

**Type of Case:**

<input type="checkbox"/> Attorney Fees	<input type="checkbox"/> Family Law	<input type="checkbox"/> Personal Injury
<input type="checkbox"/> Business	<input type="checkbox"/> Health Care	<input type="checkbox"/> Probate
<input type="checkbox"/> Contract	<input type="checkbox"/> Housing	<input type="checkbox"/> Professional Negligence
<input type="checkbox"/> Construction	<input type="checkbox"/> Insurance	<input type="checkbox"/> Public Entity
<input type="checkbox"/> Defamation	<input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Real Estate
<input type="checkbox"/> Eminent Domain	<input type="checkbox"/> Landlord/Tenant	<input type="checkbox"/> Securities
<input type="checkbox"/> Employment	<input type="checkbox"/> Medical Malpractice	<input type="checkbox"/> Appellate
<input type="checkbox"/> Labor	<input type="checkbox"/> Partnership	
<input type="checkbox"/> Other (please specify) _____		

Preparation time (in tenths): _____ hours	Total session time (in tenths): _____ hours
No. of sessions: _____	Follow-up time (in tenths): _____ hours
Total mediation fee for all parties (if any): \$ _____	Total mediation expenses (if any): \$ _____

**How did the case resolve?**

Full resolution       Resolution of some issues (How many? \_\_\_\_\_)

No resolution       Other (specify) \_\_\_\_\_

**If the mediation resolved more than one dispute, check all that were resolved:**

Another Appeal       A trial court matter       A matter not in litigation

Was your primary style in this case:       Facilitative       Evaluative       Directive?

Were counsel  Trial Attorneys       Appellate Attorneys       Both?

Did you distribute evaluation forms?       Yes       No

**On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate the court's mediation program as to:**

____ Efficiency (scheduling, etc.)	____ Paperwork
____ Courtesy and cooperation	____ Pro Bono requirement

Comments on the above, including suggestions for program improvements (use extra sheets if necessary):

**IMPORTANT:** To maintain confidentiality, please return to the Appellate Mediation Coordinator all case-related documents.

**APPENDIX 10  
MEDIATION PROGRAM INFORMATION  
SHEET (LONG VERSION)**

# Mediation Program Information Sheet

## Court Of Appeal, Third Appellate District

### Appellate Mediation Program

#### History

As a method to speed the case resolution process and to reduce costs to the litigants and the Court, the Court of Appeal, Third Appellate District, launched its Appellate Mediation Program (Program) in October 2006. Pursuant to Local Rule 1 of the Court of Appeal, Third Appellate District (<http://www.courtinfo.ca.gov/courts/courtsofappeal/3rdDistrict/localrules.htm>), any civil appeal lodged with the Court, is subject to review for placement in mandatory mediation. Pursuant to Local Rule 1, the California Rules of Court rules governing the preparation of the appellate record are suspended pending review of the appeal for amenability to appellate mediation.<sup>1</sup>

Civil appeals present a special challenge for the mediator. Dispute resolution at the appellate level is substantially more difficult than at the trial level. Typically, a party has obtained a final judgment. Therefore, the respondent on appeal perceives the matter as one that will be affirmed by the Court of Appeal, while the appellant on appeal perceives the matter as one that will be reversed on appeal. Furthermore, since a great deal of money and time have already been invested in the litigation, positions are often deeply entrenched and emotion often replaces practicality. Because of these unique characteristics, the Third District provides mandatory specialized training for all mediators on its panel.

#### Program Administration

The Program is administered by the Mediation Program Coordinator (Coordinator), acting at the direction of the Appellate Mediation Committee (Committee), the Presiding Justice of the Court of Appeal, or the supervising Associate Justice designated by the Presiding Justice to oversee the Program.

#### Contact Information

For information on how to become a Program mediator or on the mediation process, please contact the Program Office by phone (916) 274-5895, fax (916) 641-6527, or email [Rene.Ackerman@jud.ca.gov](mailto:Rene.Ackerman@jud.ca.gov), or visit the Court of Appeal, Third District Court of Appeal website at <http://www.courtinfo.ca.gov/courts/courtsofappeal/3rdDistrict/mediation.htm#app>

#### Appellate Record

As an incentive to litigants and counsel, this court's Local Rule 1stays the preparation of the appellate record with the filing of any civil notice of appeal.

#### Mediation Defined

Mediation is an informal, *confidential* process in which a neutral party (the mediator) assists the parties in understanding their own interests, the interests of the other parties, and the practical and legal realities they all encounter in litigation. The mediator helps the parties explore options and arrive at a mutually acceptable resolution of their dispute. The mediator does not resolve the dispute -- **the parties do**.

#### Subject matter

Although some disputes require an appellate decision, almost any dispute can be resolved through mediation. This includes, for example, disputes involving business matters, civil rights, corporations, construction, consumer protection, contracts, copyrights, defamation, disabilities, discrimination, domestic relations, employment, environment, harassment, health care, housing, insurance, intellectual property, labor, landlord/tenant relations, the media, medical malpractice and other professional negligence, neighborhood problems, partnerships, patents, personal injury, probate, product liability, property damage, real estate, securities, and taxes.

#### Mediators

The court has recruited experienced mediators and appellate specialists, based on their training, experience, and appellate expertise. In addition to the mandatory specialized training provided for each panel member, to enhance the skills of its mediators, the Program maintains a very active continuing education program.

An empanelled mediator, after training, is matched to specific disputes, based on the mediator's areas of expertise, general knowledge, and appellate experience.

<sup>1</sup> Currently, there is one exception: cases involving Conservatorships

## Advantages of appellate mediation

- **May avoid the risk of reversal.** Many “legal” disputes are more emotional than they are legal. Therefore, even if there is a judgment in the trial court, there is a significant possibility that mediation can better resolve the dispute because mediation directly engages the parties in the resolution process. Resolution through mediation can save the parties thousands of dollars in attorney fees, costs, and even judgment amounts.
- **May avoid financial risk.** A judgment may be worth less than face value if there is a significant risk that the judgment debtor will go bankrupt, or if a delayed judgment satisfaction will have adverse effects.
- **May provide more satisfactory results.** Often the trial court judgment does not satisfy even the prevailing party. A mediator can assist the parties to achieve their real interests.
- **May save money.** By staying the preparation of the appellate record at the filing of the notice of appeal, the mediation process can save substantial costs for preparing the record and briefs.
- **May save time.** Mediation can resolve a dispute in a matter of days, while an appeal can take months, or years.
- **Provides greater client participation.** Clients often find the restricted role in pretrial and trial proceedings frustrating. Once an appeal is filed, clients become further removed from the decision-making process. Mediation provides an opportunity for greater client participation in determining the resolution of a dispute.
- **May reduce stress.** Mediation encourages cooperation and communication while discouraging the adversarial atmosphere of litigation. Resolution through mediation offers clients the chance to get on with their lives.

## Fees

- The Third District provides, without fee to the parties, the first four (4) hours of a mediation session.
- Any mediation session that exceeds four hours may be terminated by the parties and/or the mediator, or continued by agreement at the mediator's hourly rate, paid by the parties.
- The parties can also select a private mediator and pay the market rate, however, the pro bono feature of retaining an empanelled mediator may be lost.

## Mediation process

- The mediation process commences immediately upon filing of the notice of appeal.
- Local Rule 1 stays (stops), until completion of the mediation selection process, the requirement to designate, pay for, and prepare the appellate record.
- A justice of the Court, upon filing with the Court of Appeal of all appellate mediation statements, evaluates every civil appeal.
- Following initial screening by the Court, in matters identified as potentially amenable for mediation, the Mediation Coordinator contacts all counsel for a confidential phone interview.
- The final decision on an appeal's amenability to mediation is issued, upon completion of the phone interviews by the Mediation Coordinator.
- If a case is selected for mediation, suspension of the rules governing preparation of the record remains stayed until conclusion of the mediation process.
- If a case is selected for mediation, counsel is given a notice containing instructions, contact information on the assigned mediator, and scheduling information regarding the pending confidential mediation session.
- If a case is not selected for mediation, suspension of the rules governing preparation of the trial court record is terminated by order of the Court.
- If a case is not selected for mediation, it proceeds as if the notice of appeal had been filed on the date indicated on the notice accompanying the Court of Appeal order removing the appeal from the Mediation Program.

## Deadlines

### Appellants:

- Appellant must serve and file a Civil Case Information Statement by 10 days from the Court of Appeal's notice announcing the lodging of an appeal.
- Appellant must serve and file a Civil Appeal Mediation Statement by 10 days from the Court of Appeal's notice announcing the lodging of an appeal.

### Respondents:

- Respondent may serve and file a Civil Appeal Mediation Statement by 10 days from the filing of the Appellant's Civil Appeal Mediation Statement (this statement is optional).

## **Mediation Methodology**

Although there are several methods of mediation, the mediators appointed to the Third District's mediator panel are encouraged to use the facilitative method of mediation, or a combination of facilitative, evaluative, and directive.

The facilitative method seeks to ensure that parties come to agreements based on information and understanding derived from engaging in organized communication, sharing information, managing differences, and identifying commonalities from which settlement might grow.

A mediation session begins before the clients and counsel meet face to face at the Program facility. The mediator after assignment may communicate with counsel at any time. Generally, the first communication is a pre-mediation phone conference only with counsel. Some of the topics covered during the phone conference include, the role of the mediator, what is expected of counsel and the parties, appellate issues, the appellate process, and what happens if the mediation exceeds four hours in length.

At the mediation session, the mediator, counsel, and the parties usually begin with a joint session, where the parties have the opportunity to offer their respective points of view on the issues at hand.

After the joint session, if appropriate, the parties then adjourn to separate rooms, with the mediator dividing his or her time equally between the groups.

The ultimate goal is to provide an atmosphere where the parties have the major influence on any decisions made and memorialized in a settlement agreement.

## **Settlement Agreements**

The mediators for the Court of Appeal will not heavily supervise the composition of a settlement agreement reached during mediation. Rather, counsel and the parties who participate in mediation and succeed in resolving all of the issues on appeal are encouraged independently to compose the settlement agreement on site during the mediation.

If an on-site settlement agreement cannot be composed, counsel and the parties are encouraged to outline the pertinent points, meet and confer, and if needed and appropriate, reconvene at the mediation facility on a later date to finalize and sign the agreement.

## **Mediation Outcome**

Mediation sessions that do resolve all issues on appeal result in the filing of an abandonment of appeal by appellant in the trial court of original jurisdiction. If desired, in lieu of an abandonment of appeal, appellant can file in the Court of Appeal a notice of settlement. If a notice of settlement is filed in the Court of Appeal, the appeal must be dismissed by 45 days from that filing or the Court of Appeal will dismiss the action on its own motion.

Mediation sessions that do not resolve all issues on appeal result in the appeal immediately being ordered back onto the appellate track and the suspension of the California Rules of Court governing the preparation of the appellate record is terminated. Parties are instructed to proceed as if the notice of appeal had been filed on the date of the Court's order and its accompanying notice of termination.

**APPENDIX 11**  
**COURT'S ORDER AND NOTICE**  
**MATTER NOT SUITABLE FOR MEDIATION**

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
THIRD APPELLATE DISTRICT

NATIONAL COMPANY OR INDIVIDUAL,  
Plaintiff and Appellant,  
v.  
OTHER COMPANY OR INDIVIDUAL.,  
Defendant and Respondent.

C012345  
XYZ County  
No. 45678

BY THE COURT:

The court has determined that the above case is not suitable for mediation. Pursuant to Local Rule 1, suspension of the operation of rules 8.121, 8.124(a)(1), and 8.216 of the California Rules of Court, requiring designation of the record on appeal, payment of estimated costs of preparation of the record on appeal, and submission of a proposed briefing sequence, is terminated as of the date specified on the notice issued by the Mediation Program Coordinator. The appeal will proceed in accordance with the California Rules of Court.

Dated:

HULL, Acting P.J.

-----

cc: See Mailing List

DATE  
[By fax, email and ground]

COUNSEL  
ADDRESS

COUNSEL  
ADDRESS

**APPEAL NOT SELECTED NOTICE**

**Re: CASE CAPTION  
CASE NO.  
XYZ COUNTY NO.**

Dear Counsel:

The court has determined that the above case is not suitable for mediation. This appeal remains on the active list for disposition in accordance with the California Rules of Court.

Pursuant to this court's order dated [insert date], all proceedings in the appeal are to recommence as if the notice of appeal had been filed on [insert date].

Pursuant to Local Rule 1, the date of this notice is to be treated as the date the notice of appeal was filed. Therefore, the parties and the trial court are directed to proceed with procurement of the appellate record under California Rules of Court, rule 8.121, 8.124(a)(1) and 8.216. Upon timely filing of the record, all parties are directed to file their briefs in compliance with the California Rules of Court.

Very truly yours,

ANNE K. MELINE  
Appellate Mediation Coordinator

cc: See Mailing List

MAILING LIST

Re: CASE CAPTION  
CASE NO.  
XYZ COUNTY NO.

Copies of the attached document have been sent to the individuals checked below:

COUNSEL  
ADDRESS

Tel: Fax: Email:

COUNSEL  
ADDRESS

Tel: Fax: Email:

TRIAL COURT  
ADDRESS

Court of Appeal  
Third Appellate District  
621 Capitol Mall, 10th Floor  
Sacramento, CA 95814

**APPENDIX 12**

**COURT'S NOTICE AND ORDER  
MEDIATION NOT SUCCESSFUL**

IN THE  
**Court of Appeal of the State of California**  
IN AND FOR THE  
THIRD APPELLATE DISTRICT

NATIONAL COMPANY OR INDIVIDUAL

Plaintiff and Appellant,

v.

OTHER COMPANY OR INDIVIDUAL

Defendant and Respondent.

C012345  
XYZ County  
No. 45678

BY THE COURT:

Mediation of the above case was not successful. Pursuant to Local Rule 1, suspension of the operation of rules 8.121, 8.124(a)(1) and 8.216 of the California Rules of Court, requiring designation of the record on appeal, payment of estimated costs of preparation of the record on appeal, and submission of a proposed briefing sequence, is terminated as of the date specified on the notice issued by the Mediation Program Coordinator. The appeal will proceed in accordance with the California Rules of Court.

Dated:

HULL, Acting P.J.

-----

cc: See Mailing List

DATE

COUNSEL  
ADDRESS

COUNSEL  
ADDRESS

Re: **CASE CAPTION**  
**CASE NO.**  
**XYZ COUNTY NO.**

Dear Counsel:

A civil appeal mediation conference was held on **[insert date]**. The mediation did not resolve all issues on appeal.

Pursuant to this court's order dated **[insert date of this notice]**, all proceedings in the appeal are to recommence as if the notice of appeal had been filed **[insert date of this notice]**. Pursuant to Local Rule 1, the date of this notice is to be treated as the date the notice of appeal was filed. Therefore, the parties and the trial court are directed to proceed with procurement of the appellate record under California Rules of Court, rule 8.121, 8.124(a)(1) and 8.216. Upon timely filing of the record, all parties are directed to file their briefs in compliance with the California Rules of Court.

Very truly yours,

ANNE K. MELINE  
Appellate Mediation Coordinator

Enclosure  
cc: See Mailing List

# 2009 California Rules of Court

## **Rule 8.121. Notice designating the record on appeal**

### **(a) Time to file**

Within 10 days after filing the notice of appeal, an appellant must serve and file a notice in the superior court designating the record on appeal. The appellant may combine its notice designating the record with its notice of appeal.

### **(b) Contents**

#### **(1) The notice must:**

(A) Specify the date the notice of appeal was filed.

(B) Specify which form of the record of the written documents from the superior court proceedings listed in rule 8.120(a)(1) the appellant elects to use. If the appellant elects to use a clerk's transcript, the notice must also designate the documents to be included in the clerk's transcript as required under rule 8.122(b)(1).

(C) Specify whether the appellant elects to proceed with or without a record of the oral proceedings in the trial court. If the appellant elects to proceed with a record of the oral proceedings in the trial court, the notice must specify which form of the record listed in rule 8.120(b) the appellant elects to use. If the appellant elects to use a reporter's transcript, the notice must designate the proceedings to be included in the transcript as required under rule 8.130.

(2) If an appellant intends to raise any issue that requires consideration of the record of an administrative proceeding that was admitted in evidence, refused, or lodged in the superior court, the notice must also request that this administrative record be transmitted to the reviewing court under rule 8.123.

### **(c) Copy to the reviewing court**

The clerk must promptly send the reviewing court a copy of any notice filed under this rule.

*Rule 8.121 adopted effective January 1, 2008.*

## **Rule 8.124. Appendixes**

### **(a) Notice of election**

(1) If in the notice designating the record on appeal under rule 8.121, the appellant elects to use an appendix under this rule, or if, within 10 days after the notice of appeal is filed, the respondent serves and files a notice in the superior court electing to use an appendix under this rule, this rule governs unless the superior court orders otherwise on a motion served and filed within 10 days after the notice of election is served.

(2) When a party files a notice electing to use an appendix under this rule, the superior court clerk must promptly send a copy of the register of actions, if any, to the attorney of record for each party and to any unrepresented party.

(3) The parties may prepare separate appendixes, but are encouraged to stipulate to a joint appendix. *(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 2005, and January 1, 2007.)*

**Rule 8.216. Appeals in which a party is both appellant and respondent**

**(a) Briefing sequence and time to file briefs**

In an appeal in which any party is both an appellant and a respondent:

- (1) The parties must jointly-or separately if unable to agree-submit a proposed briefing sequence to the reviewing court within 20 days after the second notice of appeal is filed.
- (2) After receiving the proposal, the reviewing court must order a briefing sequence and prescribe briefing periods consistent with rule 8.212(a).
- (3) Extensions of time are governed by rule 8.212(b).

*(Subd (a) amended effective January 1, 2007.)*

**(b) Contents of briefs**

- (1) A party that is both an appellant and a respondent must combine its respondent's brief with its appellant's opening brief or its reply brief, if any, whichever is appropriate under the briefing sequence that the reviewing court orders.
- (2) A combined brief must address the points raised in each appeal separately but may include a single summary of the significant facts.
- (3) A party must confine a reply brief, or the reply portion of a combined brief, to points raised in its appeal.

*(Subd (b) amended effective January 1, 2009; previously amended effective January 1, 2007.)*

*Rule 8.216 amended effective January 1, 2009; repealed and adopted as rule 16 effective January 1, 2002; previously amended and renumbered effective January 1, 2007.*

**APPENDIX 13**

**COORDINATOR'S NOTICE  
MEDIATION SUCCESSFUL**

DATE

COUNSEL  
ADDRESS

COUNSEL  
ADDRESS

Re: CASE CAPTION  
CASE NO.  
XYZ COUNTY NO.

Dear Counsel:

Congratulations on successfully resolving your issues on appeal. Attached is a copy of California Rules of Court, rule 8.244. Rule 8.244 states in part that when a civil matter settles after a notice of appeal has been filed in the superior court and lodged in with the Court of Appeal, either in whole or as to any party, the appellant who settles may do one of the following:

- (1) if the record on appeal has **not** been filed in the Court of Appeal (as is the case here), appellant may file in the superior court an **abandonment of appeal** (example copy attached), or
- (2) if the record on appeal has **not** been filed in the Court of Appeal, appellant can file a notice of settlement with the Court of Appeal and then, within 45 days, file in the Court of Appeal, notice of appellant's dismissal of the civil matter, or
- (3) if the record **has** been filed in the Court of Appeal, appellant can file in the Court of Appeal its notice of dismissal of the civil matter.

Again, congratulations on this most difficult of accomplishments. The Court is very aware of the energy expended by all parties, counsel, and mediator in bringing about such an achievement. We appreciate your consideration and cooperation.

Very truly yours,

Anne K. Meline  
Program Coordinator

cc: The Parties/Mediator

[http://www.courtinfo.ca.gov/rules/index.cfm?title=eight&linkid=rule8\\_244](http://www.courtinfo.ca.gov/rules/index.cfm?title=eight&linkid=rule8_244)  
<http://www.courtinfo.ca.gov/forms/fillable/app005.pdf>



## 2008 California Rules of Court

### Rule 8.244. Settlement, abandonment, voluntary dismissal, and compromise

#### (a) Notice of settlement

- (1) If a civil case settles after a notice of appeal has been filed either as a whole or as to any party, the appellant who has settled must immediately serve and file a notice of settlement in the Court of Appeal. If the parties have designated a clerk's or a reporter's transcript and the record has not been filed in the Court of Appeal, the appellant must also immediately serve a copy of the notice on the superior court clerk.
- (2) If the case settles after the appellant receives a notice setting oral argument or a prehearing conference, the appellant must also immediately notify the Court of Appeal of the settlement by telephone or other expeditious method.
- (3) Within 45 days after filing a notice of settlement-unless the court has ordered a longer time period on a showing of good cause-the appellant who filed the notice of settlement must file either an abandonment under (b), if the record has not yet been filed in the Court of Appeal, or a request to dismiss under (c), if the record has already been filed in the Court of Appeal.
- (4) If the appellant does not file an abandonment, a request to dismiss, or a letter stating good cause why the appeal should not be dismissed within the time period specified under (3), the court may dismiss the appeal as to that appellant and order each side to bear its own costs on appeal.
- (5) This subdivision does not apply to settlements requiring findings to be made by the Court of Appeal under Code of Civil Procedure section 128(a)(8).

*(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2006.)*

#### (b) Abandonment

- (1) Before the record is filed in the Court of Appeal, the appellant may serve and file in superior court an abandonment of the appeal or a stipulation to abandon the appeal. The filing effects a dismissal of the appeal and restores the superior court's jurisdiction.
- (2) The superior court clerk must promptly notify the Court of Appeal and the parties of the abandonment or stipulation.

#### (c) Request to dismiss

- (1) After the record is filed in the Court of Appeal, the appellant may serve and file in that court a request or a stipulation to dismiss the appeal.
- (2) On receipt of a request or stipulation to dismiss, the court may dismiss the appeal and direct immediate issuance of the remittitur.

#### (d) Approval of compromise

If a guardian or conservator seeks approval of a proposed compromise of a pending appeal, the Court of Appeal may, before ruling on the compromise, direct the trial court to determine whether the compromise is in the minor's or the conservatee's best interests and to report its findings.

*Rule 8.244 amended and renumbered effective January 1, 2007; repealed and adopted as rule 20 effective January 1, 2003; previously amended effective January 1, 2006.*

[http://www.courtinfo.ca.gov/rules/index.cfm?title=eight&linkid=rule8\\_244](http://www.courtinfo.ca.gov/rules/index.cfm?title=eight&linkid=rule8_244)

**APPENDIX 14**

**CAL. RULES OF COURT 3.867  
COMPLAINT POLICY**



# 2010 California Rules of Court

## Rule 3.867. Complaint coordinator

### (a) Designation of the complaint coordinator

The presiding judge must designate a person who is knowledgeable about mediation to serve as the complaint coordinator.

*(Subd (a) amended and lettered effective July 1, 2009, effective date extended to January 1, 2010; adopted as unlettered subd effective January 1, 2006.)*

### (b) Identification of the complaint coordinator

The court must make the complaint coordinator's identity and contact information readily accessible to litigants and the public.

*(Subd (b) adopted effective July 1, 2009, effective date extended to January 1, 2010.)*

*Rule 3.867 amended and renumbered effective July 1, 2009, effective date extended to January 1, 2010; adopted as rule 1622.1 effective January 1, 2006; previously amended and renumbered as rule 3.866 effective January 1, 2007.*

### Advisory Committee Comment

The alternative dispute resolution program administrator appointed under rule 10.783(a) may also be appointed as the complaint coordinator if that person is knowledgeable about mediation.

**APPENDIX 15  
CAL. RULES OF COURT RE  
FILING OF NOTICE OF APPEAL  
AND  
DESIGNATION OF APPELLATE RECORD**



# 2010 California Rules of Court

## Rule 8.100. Filing the appeal

### (a) Notice of appeal

- (1) To appeal from a superior court judgment or an appealable order of a superior court, other than in a limited civil case, an appellant must serve and file a notice of appeal in that superior court. The appellant or the appellant's attorney must sign the notice.
- (2) The notice of appeal must be liberally construed. The notice is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.
- (3) Failure to serve the notice of appeal neither prevents its filing nor affects its validity, but the appellant may be required to remedy the failure.

### (b) Fee and deposit

- (1) Unless otherwise provided by law, the notice of appeal must be accompanied by a \$655 filing fee under Government Code sections 68926 and 68926.1(b), an application for a waiver of court fees and costs on appeal under rule 8.26, or an order granting such an application. The fee should be paid by check or money order payable to "Clerk, Court of Appeal"; if the fee is paid in cash, the clerk must give a receipt.
- (2) The appellant must also deposit \$100 with the superior court clerk under Government Code section 68926.1, unless otherwise provided by law or the superior court waives the deposit.
- (3) The clerk must file the notice of appeal even if the appellant does not present the filing fee, the deposit, or an application for, or order granting, a waiver of fees and costs.

*(Subd (b) amended effective July 1, 2009; previously amended effective August 17, 2003, and January 1, 2007.)*

### (c) Failure to pay filing fee

- (1) The reviewing court clerk must promptly notify the appellant in writing if:

- (A) The reviewing court receives a notice of appeal without the filing fee required by (b)(1), a certificate of cash payment under (e)(5), or an application for, or order granting, a fee waiver under rule 8.26;
  - (B) A check for the filing fee is dishonored; or
  - (C) An application for a waiver under rule 8.26 is denied.
- (2) A clerk's notice under (1)(A) or (B) must state that the court may dismiss the appeal unless, within 15 days after the notice is sent, the appellant either:
- (A) Pays the fee; or
  - (B) Files an application for a waiver under rule 8.26 if the appellant has not previously filed such an application.
- (3) If the appellant fails to take the action specified in a notice given under (2), the reviewing court may dismiss the appeal, but may vacate the dismissal for good cause.

*(Subd (c) amended effective July 1, 2009; previously amended effective January 1, 2007, and January 1, 2008.)*

**(d) Failure to pay deposit**

- (1) If the appellant fails to pay the deposit to the superior court required under (b)(2), the superior court clerk must promptly notify the appellant in writing that the reviewing court may dismiss the appeal unless, within 15 days after the notice is sent, the appellant either:
- (A) Makes the deposit; or
  - (B) Files an application in the superior court for a waiver of fees and costs if the appellant has not previously filed such an application or an order granting such an application.
- (2) If the appellant fails to take the action specified in a notice given under (1), the superior court clerk must notify the reviewing court of the default.
- (3) If the superior court clerk notifies the reviewing court of a default under (2), the reviewing court may dismiss the appeal, but may vacate the dismissal for good cause.

*(Subd (d) amended effective July 1, 2009; adopted effective January 1, 2008.)*

**(e) Superior court clerk's duties**

- (1) The superior court clerk must promptly mail a notification of the filing of the notice of appeal to the attorney of record for each party, to any unrepresented party, and to the reviewing court clerk.
- (2) The notification must show the date it was mailed and must state the number and title of the case and the date the notice of appeal was filed. If the information is available, the notification must include:
  - (A) The name, address, telephone number, and California State Bar number of each attorney of record in the case;
  - (B) The name of the party each attorney represented in the superior court; and
  - (C) The name, address, and telephone number of any unrepresented party.
- (3) A copy of the notice of appeal is sufficient notification under (1) if the required information is on the copy or is added by the superior court clerk.
- (4) The mailing of a notification under (1) is a sufficient performance of the clerk's duty despite the death of the party or the discharge, disqualification, suspension, disbarment, or death of the attorney.
- (5) With the notification of the appeal, the superior court clerk must send the reviewing court the filing fee or an application for, or order granting, a waiver of that fee. If the fee was paid in cash, the clerk must send the reviewing court a certificate of payment and thereafter a check for the amount of the fee.
- (6) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

**(f) Notice of cross-appeal**

As used in this rule, "notice of appeal" includes a notice of cross-appeal and "appellant" includes a respondent filing a notice of cross-appeal.

*(Subd (f) relettered effective January 1, 2008; adopted as subd (e).)*

**(g) Civil case information statement**

- (1) On receiving notice of the filing of a notice of appeal under (e)(1), the reviewing court clerk must promptly mail the appellant a copy of the *Civil Case Information Statement* (form APP-004) and a notice that the statement must be filed within 10 days.
- (2) Within 10 days after the clerk mails the notice required by (1), the appellant must serve and file in the reviewing court a completed *Civil Case Information Statement*, attaching a copy of the judgment or appealed order that shows the date it was entered.
- (3) If the appellant fails to timely file a case information statement under (2), the reviewing court clerk must notify the appellant by mail that the appellant must file the statement within 15 days after the clerk's notice is mailed and that if the appellant fails to comply, the court may either impose monetary sanctions or dismiss the appeal. If the appellant fails to file the statement as specified in the notice, the court may impose the sanctions specified in the notice.

*(Subd (g) amended and relettered effective January 1, 2008; adopted as subd (f) effective January 1, 2003; previously amended effective January 1, 2007.)*

*Rule 8.100 amended effective July 1, 2009; repealed and adopted as rule 1 effective January 1, 2002; previously amended effective January 1, 2003, August 17, 2003, and January 1, 2008; previously amended and renumbered effective January 1, 2007.*

Survey Response

# California

4<sup>th</sup> District

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

**1. *What year was your appellate mediation program established?***

The year the court's mediation program was established was **1991**.

**2. *What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?***

The procedure has been formalized in the Local Rules of the Courts of Appeal of California, Fourth Appellate District, Rule 4 (see attachment).

**3. *Are mediations ordered by the court or is mediation an option service provided upon request?***

Mediations are ordered by the court; and participation in the mediation program is mandatory. Parties can, however, request to be considered for participation in the court's settlement conference program. If the court does decide to accept the appeal for participation in the program pursuant to counsel's request, participation of all parties is mandatory.

**4. *When did the program begin conducting mediations?***

The program began conducting mediations in **September, 1991**.

**5. *How many civil appeals are administered by your court annually?***

On average, the court administers **500** civil appeals annually.

**6. *How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.***

Civil Case Information Statements (CCIS's) are subject to preliminary screening by the court's Settlement Conference Coordinator. Most, but not all, pro per cases are excluded from the program. All other cases are reviewed by the Presiding Justice of the court and he makes the final determination of which cases are accepted for the court's settlement conference program.

**7. How many cases were mediated in most recent year?**

For the calendar year 2011, 45 cases were mediated and 59 mediations were held (45 cases w/ initial conferences; 11 cases w/ one follow-up conference held; 2 cases w/ two follow-up conferences held; and 1 case w/ three follow-up conferences held).

**8. How many cases settled in mediation in the most recent year?**

**Full settlements: 21**

**Partial settlement: 1**

**9. How does your program define a "partial settlement"?**

The above-referenced case involved three respondents—two respondents settled, the third respondent did not; hence, the partial settlement. It is the court's goal to effect a global settlement whenever possible. Partial settlements are very rare.

**10. Does your program offer mediation in cases with self-represented parties? If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party. Does your program employ different policies or screening in cases involving self-represented parties?**

Though rarely, the court does accept self-represented parties for its settlement conference program. The court does not employ different policies or screening in cases involving self-represented parties.

**11. Who serves as mediators in your program. How many of such mediators are currently active in your program?**

Attorneys from local bar associations serve as mediators as well as three of seven justices at this court. Currently there are 44 active volunteer attorney mediators in the program.

**12. What are the required qualifications for appellate mediators in your program?**

While not required, many of the court's volunteer attorney mediators have had formal training at Pepperdine University School of Law's Straus Institute for Dispute Resolution.

**13. How are mediators selected or designated for a particular case?**

It is the responsibility of the court's Settlement Conference Coordinator to assign the mediators. She maintains a detailed list of mediators with their expertise (e.g., family law, personal injury, medical malpractice, etc.) and assigns them accordingly, subject to their availability.

**14. Are your cases mediated by one mediator or are they co-mediated?**

All cases are mediated by one mediator, none are co-mediated.

**15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.**

At any given time, the court's volunteer attorney mediators use a combination of all of the above-referenced approaches.

**16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.**

This court's Presiding Justice supervises the settlement conference program. He reviews all cases and determines which cases are appropriate for the program. The court's Managing Attorney works closely with both the Presiding Justice and the Settlement Conference Coordinator in administering and maintaining the program. Two Associate Justices, along with the Presiding Justice, serve as mediators. When these justices do serve, they are recused from serving on the opinion panel.

**17. What is the annual cost of the program?**

Because only volunteer attorney mediators are utilized, the only cost of the program is the salary of the Settlement Conference Coordinator (approximately \$66,000/year).

**18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?**

Three individuals assist in the management and administration of the court's mediation program: the Presiding Justice, the court's Managing Attorney, and the court's Settlement Conference Coordinator. The Presiding Justice also serves as a mediator.

**19. If parties are ordered to mediation in your program, are they permitted to “opt-out” of mediation? Please describe the grounds permitted to opt-out.**

As stated in the answer to question number 3, once an appeal is chosen for the court’s settlement conference program, participation and attendance are mandatory. No one is permitted to “opt out” of the program.

**20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe.**

The program is authorized to impose sanctions for failure to participate in mediation or for failure to submit required documents. In the 20-year history of the program, though seldom, sanctions have been imposed. In the rare occurrence that sanctions have been imposed, a show cause hearing has been held with one of the court’s Associate Justices presiding.

**21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)**

Of the 45 mediations that were held in calendar year 2011, noted below are the major case types:

(1) Torts	15 Cases	33%
(2) Contract	12 Cases	27%
(3) Real Property	7 Cases	16%
(4) Employment	6 Cases	13%
(5) Family Law	2 Cases	4%
(6) Environmental	1 Case	2%
(7) Probate/Trust	2 Cases	4%

**22. If you are able to provide settlement statistics, per case type, please do.**

The settlement statistics, per case type, are noted below:

	<u>Settlement</u>	<u>Settlement Not Possible</u>
(1) Torts	8 (53%)	7 (47%)
(2) Contract*	5 (46%)	6 (54%)
(3) Real Property*	3 (50%)	3 (50%)
(4) Employment	3 (50%)	3 (50%)
(5) Family Law	1 (50%)	1 (50%)

(6) Environmental	0 ( 0%)	1 (100%)
(7) Probate/Trust	1 (50%)	1 (50%)

**\*Note:** Two cases (1 Contract, 1 Real Property) are pending with follow-up settlement conferences scheduled in February and March.

**23. What types of civil cases, if any, are ineligible for mediation in your program?**

All civil cases are considered for the program.

**24. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.**

Since its creation, there have been two significant modifications to the program. The first significant modification is settlement conferences are now held pre-briefing where in the beginning of the program, to handle a backlog of cases waiting for opinion, the conferences were held post-briefing. Today when a case is accepted for the settlement program, briefing is stayed until the settlement conference is held. Should the case not settle (and the record has been filed), the stay is lifted and briefing commences 40 days from the date of the conference. The preparation of the record is not stayed when the appeal is accepted for the program because the court does not want to delay that process. The second significant modification is that in 1997, justices at the court began mediating cases.

**25. What do you rate as the most significant successes of your appellate mediation program to date?**

One of the most significant successes of the court's mediation program is its settlement rate. While settlement statistics for the program have varied from year to year, on average, the program has maintained a settlement rate of close to fifty percent. Another significant success of the court's program is that for over 20 years, volunteer attorney mediators have been utilized. Since the inception of the program in 1991, not one penny of the state budget has ever been used to pay a mediator. To this court's knowledge, there is no other appellate court in the State of California which utilizes attorney mediators who volunteer one hundred percent of their time.

**26. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?**

This court is extremely fortunate that its settlement conference program does not have any major challenges or issues. It is a small operation with three people primarily involved; the Presiding Justice, the court's Managing Attorney, and the Settlement Conference Coordinator. Communication amongst these three individuals is ongoing where if an issue does arise, it is immediately addressed and remedied. It is a collaborative effort where ideas/suggestions are

welcomed and respected. *This court would be particularly interested in learning how many other appellate courts around the country, if any, exclusively utilize mediators who volunteer 100% of their time to the program.*

**27. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?**

The settlement conference program at our court has significantly affected the workload of the court. Every time a case settles, it is one less appeal which requires the attention and resources of the court. From the clerks' office to the justices' chambers, significant amounts of time and money are saved. When a settlement occurs, all future filings regarding the appeal are stopped thereby freeing the clerk's office from processing all the paperwork—time and money saved. With settlements occurring before briefing begins, there is no need for a justice and his/her staff to research and write an opinion—again, time and money saved.

**28. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.**

Attached are copies of the following documents:

- (a) Local Rules of the Courts of Appeal of California, Fourth Appellate District, Division Two, Rule 4;
- (b) Confidential Settlement Conference Information Form;
- (c) Settlement Conference Procedure form;
- (d) Settlement Conference Program brochure;
- (e) Article from *The Sun* newspaper dated March 22, 1992, entitled "Lawyers as Volunteer Mediators: It Works," written by Presiding Justice Manuel A. Ramirez;
- (f) Article from *The Sun* newspaper dated May 25, 1995, entitled "Local Lawyers Improve Our Justice System," written by Presiding Justice Manuel A. Ramirez; and
- (g) Article from Riverside County Bar Association's *Riverside Lawyer*, dated July/August 2011, entitled *Law Day 2011*.

**29. Has your program been evaluated? If so, could you share the results of the evaluation?**

While the court's settlement conference program has never been formally evaluated, in 1996, the program received the Ralph N. Kleps Award for "improvement in the administration of the courts" presented by the Judicial Council of California to the Court of Appeal, Fourth District, Division Two, in the category of courts with three to ten justices. To even be considered for the award, certain criteria needed to be met and thus, the program was "evaluated" as to how the program improved the administration of the courts.

**Mediation Program Name:** Volunteer Attorney Mediator Appellate Settlement Conference Program

**Court:** Fourth Appellate District Court, Division Two  
Riverside, CA

**Court Case Jurisdiction:** Superior Courts of San Bernardino County  
Superior Courts of Riverside County  
Superior Courts of Inyo County

**Court Geographic Jurisdiction:** San Bernardino County, Riverside County, and  
and Inyo County

**Name of Mediation Program  
Director/Administrator:** Jacqueline J. Hoar  
Settlement Conference Coordinator

**Address:** 3389 Twelfth Street  
Riverside, CA 92501

**Telephone:** 951-782-2495

**E-mail:** [jackie.hoar@jud.ca.gov](mailto:jackie.hoar@jud.ca.gov)

**Website:** [www.courts.ca.gov/4dca.html](http://www.courts.ca.gov/4dca.html)

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: February 17, 2012

Jacqueline J. Hoar  
Name

Jacqueline J. Hoar  
Signature

Settlement Conference Coordinator  
Title

## ATTACHMENTS

Local Rules of the Courts of Appeal of California, Fourth Appellate District, Division Two, Rule 4;

Confidential Settlement Conference Information Form;

Settlement Conference Procedure form;

Settlement Conference Program brochure;

Article from *The Sun* newspaper dated March 22, 1992, entitled "*Lawyers as Volunteer Mediators: It Works,*" written by Presiding Justice Manuel A. Ramirez;

Article from *The Sun* newspaper dated May 25, 1995, entitled "*Local Lawyers Improve Our Justice System,*" written by Presiding Justice Manuel A. Ramirez; and

Article from Riverside County Bar Association's *Riverside Lawyer*, dated July/August 2011, entitled *Law Day 2011*.

**LOCAL RULES OF THE COURT OF APPEAL  
FOURTH APPELLATE DISTRICT  
[Amended effective August 13, 2010]**

**Rule 1. Writ Proceedings**

(a) **[Request for immediate stay]** A request that an immediate stay be issued or other immediate relief be granted is to be served on the respondent and each real party in interest by (1) personal delivery or (2) an expeditious method consented to in advance by the party served. If the respondent or any real party in interest is not served personally or by an expeditious method consented to in advance by the party served, the court will not act on the request for five days, except to deny it summarily, absent a showing of good cause. The document cover must state conspicuously "STAY REQUESTED" or "IMMEDIATE RELIEF REQUESTED" or words of similar effect.

The court may issue a stay or other order necessary to preserve the status quo or the court's jurisdiction without opposition. However, a request for immediate relief, other than a stay or other order necessary to preserve the status quo or the court's jurisdiction, will not be granted unless the court has received an unsolicited opposition or, alternatively, has requested opposition.

(b) **[Preliminary opposition]** In an extraordinary proceeding involving a petition for writ of mandate, certiorari or prohibition pursuant to California Rules of Court, rules 8.485-8.493, the real party in interest need not file a preliminary opposition as provided in rule 8.487(a) unless requested to do so by the court. Except as provided in subdivision (a) of this rule, the court will not take any action on a writ petition, other than to summarily deny it, without first giving the real party in interest an opportunity to respond.

*(Amended, eff. Aug. 13, 2010; adopted, eff. Oct. 29, 2004.)*

**Rule 2. Covers on Documents Filed With The Court**

The court will not accept for filing any document that has a plastic or acetate cover or does not conform strictly to rules 8.144 and 8.204 of the California Rules of Court.

*(Adopted, eff. Oct. 2, 1983. As amended, eff. Oct. 29, 2004; Jan. 1, 2007.)*

### **Rule 3. Stipulation for Use of Original Superior Court File**

Rule 8.128 of the California Rules of Court provides for the use of the original superior court file in lieu of the clerk's transcript on appeal in those civil cases where the parties so stipulate. In accordance with rule 8.128 of the California Rules of Court, the procedure therein is approved for use by the superior courts within this district unless the Court of Appeal orders otherwise in a particular case.

*(Formerly Rule 10, adopted, eff. April 26, 1992. Renumbered Rule 3, eff. Oct. 29, 2004. As amended, eff. Jan. 1, 2007.)*

### **Rule 4. Civil Settlement Conference Procedures (Division Two Only)**

(a) **[Application of rule]** This rule is adopted pursuant to rule 8.248, California Rules of Court, and shall apply to all civil cases except appeals from proceedings under sections 300, 601, and 602 of the Welfare and Institutions Code, appeals from proceedings under sections 221 and 232 of the Civil Code, and appeals from original proceedings ancillary to a criminal prosecution.

(b) **[Notice of availability of conference]** Upon receipt of notice of the filing of a notice of appeal, the clerk of this court shall mail a copy of this rule to counsel for all parties.

#### **(c) [General settlement conference procedure]**

(1) The presiding justice may schedule a settlement conference and order the parties' attendance at any time during the pendency of an appeal.

(2) Written notice of the date and time of the settlement conference will be given by the court.

(3) Immediately upon accepting a case for the settlement conference procedure, all further proceedings, including the filing of briefs, shall be suspended until further order of the court. However, this rule shall not suspend preparation of the appellate record unless a specific order is issued directing suspension of record preparation.

#### **(d) [Prebriefing settlement conference procedure and sanctions]**

(1) A request for a settlement conference to be held prior to completion of briefing shall be served and filed within 30 days from the date of mailing of the notice specified in subdivision (b). Opposition to a

request for a settlement conference must be served and filed within 15 days after the request's filing date.

(2) If the court orders a settlement conference prior to the completion of briefing, the parties shall each serve and file an original and one copy of a settlement conference statement at least 15 days before the settlement conference. The parties may file by the same date a joint settlement conference statement in lieu of separate statements. Failure to timely serve and file a settlement conference statement complying with this rule may result in the imposition of sanctions including dismissal of the appeal. Every settlement conference statement shall contain the following:

(A) The trial court name and case title and number;

(B) The name of the judge who rendered the judgment or order appealed and the date of its entry;

(C) The date the notice of appeal was filed;

(D) The names, address, and telephone numbers of counsel for all parties to the appeal;

(E) A brief description of the judgment or order appealed;

(F) A concise statement of the case, including a brief procedural history and all facts material to consideration of the issues presented; and,

(G) The issues expected to be raised in the briefs.

(e) **[Postbriefing settlement conference procedure and sanctions]** After briefing is completed, the court may request the parties to provide information helpful to the court in deciding whether to order the parties to participate in a settlement conference. The parties shall complete all post-briefing settlement conference questionnaires and respond to all confidential settlement conference inquiries within 15 days of mailing by the clerk of the court. Failure to timely respond to a settlement conference inquiry or questionnaire may result in the imposition of sanctions including dismissal of the appeal.

(f) **[Settlement conference and sanctions]**

(1) The court shall maintain a list of attorneys who have developed expertise in specified areas of law, are generally respected in the legal community, and are willing to mediate settlement conferences at this court.

These attorneys shall be designated as settlement conference mediators and preside over every settlement conference unless otherwise ordered. A justice or assigned justice may be designated as a settlement conference mediator and preside over a settlement conference if so ordered.

(2) The mediator presiding over a settlement conference may in his or her discretion continue it from time to time to allow for further negotiation.

(3) Counsel for every party to the appeal and their clients shall attend any settlement conference. Failure to attend a settlement conference may result in the imposition of sanctions against any party or counsel, including dismissal.

(4) The settlement conference mediator may invite parties to the action who are not parties to the appeal, or any person who has an interest in the action, to attend the settlement conference if it appears to the mediator that their presence may facilitate settlement of the case. Any party to the appeal may serve and file a written request for the attendance of such a party or person at least 15 days before the settlement conference.

(5) Counsel shall confer with their clients in advance and be thoroughly familiar with the case and prepared to present their contentions in detail.

(6) The presiding justice, a justice designated by the presiding justice, or the settlement conference mediator may excuse a client's personal attendance upon request and a showing that hardship or unusual circumstances make the client's attendance impossible or impractical. If personal attendance is excused, counsel either shall have obtained full authority to agree to a settlement that binds the client or the client shall be available for consultation by telephone.

(7) Where settlement cannot be reached, partial settlement will be sought. Any settlement shall be reduced to writing and signed by counsel. After a complete settlement has been agreed to in writing, the parties shall promptly file a stipulation to dismiss the appeal on the ground that the case has been settled. The stipulation shall specify the allocation of costs on appeal and state whether the remittitur is to issue immediately.

**(g) [Disqualification of settlement conference justice]**

(1) A justice or assigned justice who participates in a settlement conference that does not result in complete settlement shall not thereafter participate in any way in the consideration or disposition of the case on its merits.

(2) A justice or assigned justice of the court will not be disqualified to participate in the consideration or disposition of a case on its merits because he or she has ruled on a request for a settlement conference, ordered that a settlement conference be held, signed orders granting relief from default for an act required by a party under this rule, extended or shortened any time period specified in this rule, or otherwise signed an order concerning a procedural aspect of the settlement conference process. Only mediating a settlement conference shall disqualify a justice from consideration or disposition of the case on its merits.

*(Adopted, eff. Oct. 13, 1992. As amended, eff. Oct. 29, 2004; Jan. 1, 2007.)*

**Rule 5. Filing by Facsimile**

(a) Counsel may transmit the following documents to the Divisions of the Fourth Appellate District: (1) request for dismissal; (2) substitution/association; (3) change of address; (4) bankruptcy status letter; (5) request for oral argument; (6) certificate of interested entities or persons; (7) Attorney General/County Counsel full concession letters; (8) County Counsel *Sade C.* letter; (9) civil case information statement (Divisions One and Three only); (10) stipulation or request for extension of time; (11) service copy pursuant to California Rules of Court, rule 8.340; and (12) request for publication of an unpublished opinion under California Rules of Court, rule 8.1120. The filing party is responsible for verifying that documents are acceptable for fax filing. Other documents may be fax-filed only at the request of the court.

(b) The facsimile document must comply with all rules as would be required during traditional filing (i.e. proof of service, etc.). There is no fee for fax filing the documents listed above. The facsimile document must not exceed ten (10) pages in length. Each document must have a Facsimile Transmission Cover Sheet. *[A copy of the form follows these rules.]* The caption page must contain the phrase "By Facsimile" or "By Fax" immediately below the title of the document.

(c) The document that is filed by facsimile shall have the same legal effect as an original paper document. Signatures on fax-filed documents are considered

originals. The parties shall retain original signed documents should disputes arise requiring the court to verify original signatures.

(d) Service between the parties by facsimile is permitted by written agreement between the parties. This agreement should not be filed with the court, but may be requested by the court should a dispute arise regarding agreement to accept fax service.

(e) The court will not use facsimile transmission for service of court orders.

(f) The court will not send conformed copies of fax filings. Copies of any documents in the court file can be made by a copying service. In Divisions One and Three, a public copy machine is available in the clerk's office during public office hours.

(g) The standard confirmation option of a fax machine shall serve as confirmation of the transmittal of a document to the court. If the confirmation returns unsuccessful, the filing party should notify the court for the problem to be addressed. Counsel may verify the filing of the document through the court's web site. If the fax filing is not filed with the court because of error in transmission or clerical error, the party may make a motion to the court for an order filing the document nunc pro tunc.

(h) The court's fax filing machine shall be available 24 hours a day, although filings received after public office hours, on weekends or court holidays, shall be deemed filed on the next court day. The fax filing numbers are: Division One -- (619) 645-2495; Division Two -- (951) 248-0235; and Division Three -- (714) 567-6128.

*(Adopted, eff. Nov. 9, 2007.)*

**Rule 6. Repealed, eff. Sept. 9, 1996.**

**Rule 7. Repealed, eff. Dec. 1, 2003**

**Rule 8. Repealed, eff. Oct. 29, 2004**

**Rule 9. Repealed, eff. March 10, 2003**

**Rule 10. Renumbered Rule 3, eff. Oct. 29, 2004**

**COURT OF APPEAL - STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT - DIVISION TWO  
3389 TWELFTH STREET  
RIVERSIDE, CA. 92501-3819  
(951) 782-2495**

**SETTLEMENT CONFERENCE INFORMATION FORM**  
**CONFIDENTIAL**

Case Title: \_\_\_\_\_

v.

\_\_\_\_\_

Court of Appeal Case #E \_\_\_\_\_

Superior Court Case # \_\_\_\_\_

1. Describe the nature of the superior court action (including a summary of the facts from your perspective): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Describe the nature of this appeal (including a summary of the issues from your perspective) and the relief sought: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Describe the status of any present or previous settlement negotiations: \_\_\_\_\_

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4. If you are the **APPELLANT** in this appeal, state the terms of your preliminary demand in order to settle this matter: \_\_\_\_\_

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5. If you are the **RESPONDENT** in this appeal, state the terms of your preliminary offer to settle this matter: \_\_\_\_\_

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6. If you feel this case is appropriate/inappropriate for the settlement procedure, please explain:

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7. List the names and interest of persons necessary to settle this appeal, include insurance carriers, trustee of bankruptcy, if applicable: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**RETURN ORIGINAL PLUS ONE (1) COPY TO THE COURT OF APPEAL**  
**ATTN: SETTLEMENT COORDINATOR**

Counsel Submitting: \_\_\_\_\_ Date: \_\_\_\_\_

Firm Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Name of Party Represented: \_\_\_\_\_

## SETTLEMENT CONFERENCE PROCEDURE

All parties and their counsel of record are **required** to **personally** attend the Settlement Conference. Counsel may **not** have other counsel specially appear on their behalf. The personal attendance of an insurance adjuster is **required** where the party is relying upon insurance proceeds to settle the case.

If in counsel's opinion the attendance of his or her client is impractical, counsel **shall** serve and file with the clerk of this court at least 15 days prior to the conference, a written request showing a good cause for the client's attendance to be excused. A **non-corporate party** requesting to be excused must sign and attach to the request (1) a written authorization granting to counsel full settlement authority to negotiate and bind the party to a settlement agreement without further approval by the client or (2) promise to be available by telephone during the entire period the Settlement Conference is in session.

A **corporate party**, including a corporation or governmental body, is considered to be its **board of directors or other governing board** and all board members **must personally** attend. If in counsel's opinion the attendance of the governing board is impractical, at least 15 days prior to the conference, counsel shall serve and file a written request to excuse the personal attendance of all board members. Counsel must attach to the request an authorization by the governing board granting to a governing board member or high-ranking executive full settlement authority. This authority may be subject only to final approval by the board of directors or governing body. The authorized member or executive **must personally** attend the conference. The court will order all members of the entity's governing board to appear if necessary to assure meaningful settlement discussions. (See Local Rules of the California Courts of Appeal, Fourth District, Division Two, local rule 4(f)(6); *Sigala v. Anaheim City School Dist.* (1993) 15 Cal.App.4th 661.)

A settlement may take the form of a stipulated court of appeal opinion or dismissal of the appeal. The dismissal alternative leaves the judgment or order appealed in effect, subject to the settlement agreement. If the agreement is breached, any party may bring an action in the superior court to enforce the agreement by an action for breach of contract. Where the parties do not want to leave the existing judgment or order intact, they may stipulate or move to reverse, modify and affirm, or any number of possible dispositions. A copy of the original settlement agreement must be attached to the stipulation or motion, and may be attached to the short opinion the court will file setting forth the requested disposition. The mediator and/or the court's principal attorney will be available to answer any questions that may arise concerning the two alternatives. (See Code Civ. Proc., §128, subd.(a)(8); *Neary v. Regents of University of California* (1992) 3 Cal.4th 273.)

In either alternative, the parties should stipulate as to who pays the costs on appeal -- the parties usually stipulate to bear their own cost. (See Cal. Rules of Court, rule 8.276.) The parties may also stipulate to have the immediate issuance of the remittitur. (Cal. Rules of Court, rule 8.272(c)(1).) Unless otherwise arranged, the court will expect the motion or stipulation to be served and filed within 15 days of the conference at which the settlement is agreed upon.

# Lawyers as volunteer mediators: It works

By MANUEL A. RAMIREZ

**K**udos to the San Bernardino and Riverside lawyers who participated as settlement conference mediators on behalf of the Court of Appeal. They've saved taxpayers thousands of dollars.

On Feb. 6, the justices of this court, as well as the court's staff, held a reception to honor those lawyers who generously gave their time and energy as settlement conference mediators. The reception was sponsored by the San Bernardino and Riverside County Bar Associations.

In January 1991, upon my appointment by Gov. Deukmejian as presiding justice of this court, one of my priorities was review of internal operations and procedures relative to the increasing backlog of civil and criminal cases. Based upon the record growth rate of cases, in February 1991, I asked the then-presidents of the San Bernardino and Riverside County Bar Associations, Ken Glube and Kurt Seidler, respectively, for their assistance in developing a settlement conference program.

About 61 experienced and respected civil attorneys from San Bernardino and Riverside counties were selected as volunteer mediators. Before serving as mediators, the lawyers were required to at-

## IT'S YOUR TURN

tend an orientation program detailing guidelines and procedures.

The project began in June 1991 and settlement conferences were conducted in September, October and November. During that time, each mediator assigned to a case was matched according to his or her expertise with appeals that had settlement potential. Before the settlement conference, the mediators reviewed the record and any briefs or confidential settlement conference statements filed by parties. In addition to preparation time, the mediators spent an average of four to eight hours attempting to reach a resolution in the case.

As a result of our pilot program, 46 cases were scheduled for settlement conference and 20 cases settled, a remarkable success rate of 43 percent. Conversely, during the years 1989 and 1990, no cases were settled by mediation.

A cost-benefit analysis reveals the program is a true success. The 20 cases equal about one-fourth the annual output of a justice's chambers—a net savings of more than \$200,000 to the taxpayers.

The lawyers listed below are to be congratulated for the vital role they played in this innovative program that is the first of its kind in

the appellate courts of this state:

Ward W. Albert, Roland C. Bainer, Steven A. Becker, Michael Bell, John Belton, Caywood J. Borrer, John A. Boyd, Terry Bridges, Don C. Brown, George Bruggeman Jr., William J. Brunnick, William R. De Wolfe, Thomas Victor Flaherty, Victor A. Gables, Raymond T. Gail, Florentino Garza, Bart C. Gaut, Michael A. Goldware, Richard A. Granowitz, Hollis G. Hartley, James O. Heiting, Walter Hogan, J.E. Holmes III, Thomas S. Huds-peth, Thomas N. Jacobson, Carl F. Jordan, Karl J. Knudson, Kary R. Kump, Cyrus J. Lemmon, Randolph L. Levin, Richard J. Lister, Elliott Luchs, Thomas H. Ludlow Jr., Cynthia A. Ludvigsen, Bruce D. Maclachlan, Donald M. Magdziasz, John W. Marshall, Robert A. McCarty, Thomas F. McGrath, Dan G. McKinney, Greg C. Middlebrook, David G. Moore, Bruce Morgan, Peter J. Mort, Stanley O. Orrock, Donald F. Powell, Duke D. Rouse, Stephan G. Saleson, Walter E. Scarborough, Charles T. Schultz, William D. Shapiro, M. Neal Singer, Ronald G. Skipper, Leighton B. Tegland, Lucien A. Van Hulle, C.L. Vineyard, Alexandra S. Ward, James D. Ward, Lawrence J. Winking, Victor L. Wolf, Ray O. Womack Jr.

Ramirez is presiding justice of the state 4th District Court of Appeal, Division 2, in San Bernardino.

# Local lawyers improve our justice system

**A**s the presiding justice of the 4th District Court of Appeal, Division II, in San Bernardino, I come into contact with the men and women of our legal community — judges, prosecutors, public defenders, civil law and government lawyers and lawyers who work for public agencies — who work daily to enforce the laws and constitutions of our state and federal governments.

These dedicated and hard-working men and women work diligently to improve and promote our administration of justice system. I congratulate the men and women of our profession for their continued commitment and vigilance in protecting and promoting our system of laws throughout the United States.

We accept for granted the principle that we should be governed by law rather than by rulers. Even the highest elected officials in our country are themselves limited by state and federal constitutions, which express our most precious and deeply held beliefs about representative democracy limited so as not to infringe on individual rights and liberty.

Implementation of government by law requires not only an informed and responsible citizenry, but also people who have the skills needed to create, administer and enforce the law. These people include many professions, ranging from law enforcement officers to legislators, but most prominently lawyers.

As legislators, elected and appointed executives, judges, governmental attorneys and private practitioners, lawyers are the ones who carry the greatest responsibility for making the rule of law work.

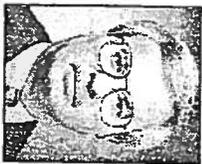
The blessings of liberty and order this nation enjoys are the result, in large part, of the administration of the rule of law by the great majority of this country's

lawyers, who honestly, diligently, intelligently and compassionately practice their profession.

This area has some very special lawyers, who volunteer their services to the Court of Appeal and, more importantly, donate

their time and services to the taxpayers of this state.

## Manuel A. Ramirez



### POINT OF VIEW

When I was appointed by Governor Deukmejian in January 1991, as the presiding justice of this court, I noted a record number of notices of appeal filed in 1988, 1989 and 1990. One of my initial tasks was to review the internal operations and procedures of this court relative to the increasing backlog of civil and criminal cases.

In February 1991, I approached Ken Glube and Kurt Seidler, who, at the time, were the presidents of the San Bernardino and Riverside County Bar associations, respectively, and requested their input and assistance regarding the formulation and implementation of a settlement conference program as a response to this court's growing backlog problem.

Thereafter, approximately 61 experienced and respected civil attorneys from San Bernardino and Riverside counties were selected to act as volunteer mediators.

The project commenced in June 1991, and settlement conferences were conducted in September, October and November. During that time, each volunteer mediator assigned to a case was

matched according to his or her expertise with appeals that had settlement potential. Prior to the settlement conference, the volunteer mediators reviewed the entire record and any briefs or confidential settlement conference statements filed by the parties. In addition to preparation time, the volunteer mediators spent an average of four to eight hours attempting to reach a resolution in the matter.

Since its beginning, the program has grown considerably. There are now 90 volunteer lawyer mediators and one retired superior court judge assigned to this court. Between 1992 and the end of March 1995, this court has conducted settlement conferences in 465 cases and settled 147 for a very respectable settlement success rate of 31.6 percent.

More importantly, the volunteer lawyer mediators are responsible for having saved the taxpayers of this state in excess of \$650,000. In addition, the volunteer lawyer mediators have also saved litigants in settled cases from the incalculable delay and additional attorney fees and litigation costs involved in orally arguing the appeal, post-appeal petitions for rehearing and review, sometimes resulting in further state and/or federal review, and in further trial court proceedings when appeals result in reversals.

Relative to this program, I want to acknowledge the continued encouragement and support of Associate Justices Howard Dahney, Thomas Hollenhorst, Art McKinsler, Betty Ritchi and Doug McDaniel. In particular, I want to thank Justice Hollenhorst for his assistance in the creation and administration of the program in its inaugural year and his continued service in conducting the order to show cause hearings for attorneys and parties who fail to comply with settlement rules. Principal attorney Don Davito has also been an important team member in devel-

oping and supervising the program.

In addition, the program would not be what it is today without the creative administrative contributions of our first settlement coordinator, Susan Walters. The effectiveness of the program has improved under the guidance of the current coordinator, Beatrice Milton.

The 90 lawyers and retired Superior Court Judge M. Ross Bigelow are to be publicly acknowledged, saluted and congratulated for the vital role they have played in the success of this unique and innovative program, which is the first and only one of its kind in the appellate courts of this country.

In closing, I am reminded of the words spoken during a July 1850 law lecture by then-lawyer Abraham Lincoln. In his lecture to a group of lawyers regarding their duties and responsibilities as a profession, he said: "Discharge litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough."

In the Inland Empire, we are fortunate to have volunteer lawyer mediators dedicated to the ideal of the law and who duly work to "persuade neighbors to compromise," so there will be no losers, only winners. They are men and women who have acted with honor and dignity and served as "peacemakers" on behalf of the Court of Appeal and the citizens of this state.

Ramirez is presiding justice of the 4th District Court of Appeal, Division II, in San Bernardino. Point of View is an occasional column of commentary by local citizens. Send material to Point of View, The Sun, 399 N. D St., San Bernardino, Calif. 92401. Or fax it to (909) 885-8741.

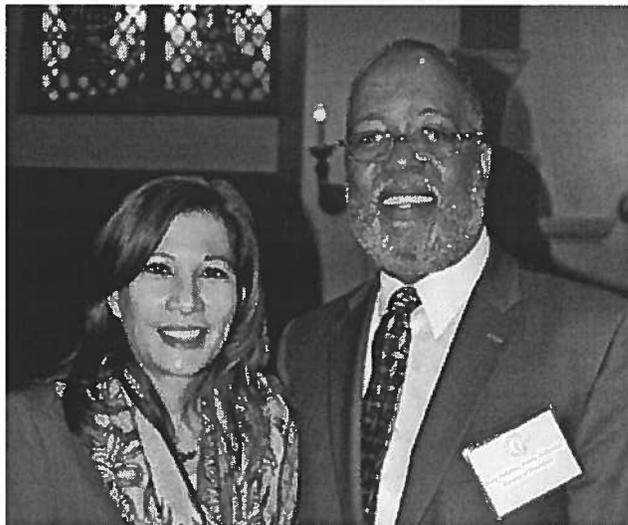
# LAW DAY 2011

by Kira Klatchko

This past May 9, the entire Inland Empire legal community came together to support a special Law Day event celebrating service to the bench and bar. The RCBA, the San Bernardino County Bar Association, the Federal Bar Association (Inland Empire Chapter), the Western San Bernardino County Bar Association, the Inland Empire Legal Association of Women, and three chapters of the Inns of Court (the Warren Slaughter-Richard Roemer Inn, the Joseph B. Campbell Inn, and the Leo A. Deegan Inn) jointly sponsored the Law Day event, along with the Court of Appeal for the Fourth District, Division Two. Well over 150 members of the legal community attended the function in the Music Room of the Mission Inn. All of the justices of the court of appeal, along with numerous judges and officials from the Riverside and San Bernardino Superior Courts, were in attendance, as was the Chief Justice of the California Supreme Court, Justice Tani Cantil-Sakauye. The community-wide support for the event was no surprise, given that the event honored both the spirit of Law Day, a day of national dedication to the rule of law, and the 20th anniversary of the court of appeal's award-winning and unique mediation program.

The Presiding Justice of the Court of Appeal, Manuel A. Ramirez, emceed the event and recounted the history of the mediation program. Among other things, he said that the mediation program, the first of its kind in the state, has resulted in 941 cases being settled since the program began in 1991. The program's success, he said, is based on the hard work of its volunteer mediators, all 45 of whom donate their time to the court, spending, on the average, four to eight hours on each case. Justice Ramirez recognized each of the mediators and thanked them for collectively mediating over 2,000 cases. He also recognized Jacqueline Hoar and past settlement conference coordinators, all of whom he said have contributed immeasurably to the program's success.

Justice Ramirez also gave a brief history of Law Day and a moving speech about pioneering female attorneys who struggled to gain acceptance in the profession. That speech made a fine introduction for the keynote speaker, a pioneering female attorney and jurist in her own right, the recently confirmed Chief Justice Cantil-Sakauye. Her Honor spoke extemporaneously about the importance of the rule of law in our society and joked about the volume of work set before



Chief Justice Tani Cantil-Sakauye and Riverside County Public Defender Gary Windom

her on her first week as Chief Justice, which included, among other things, a contentious fight about massive budget shortfalls, Justice Moreno's retirement, and the certification by the Ninth Circuit of an issue relating to the Proposition 8 marriage cases. The Chief Justice's remarks were warmly received, and, though she was on a very tight schedule, she made time after the event to speak with attendees, noting that she would be back in the Inland Empire soon.

Photos courtesy of Jacqueline Carey-Wilson



left to right: April Rylaarsdam, Yoginee Braslaw, Jacqueline Hoar, Chief Justice Tani Cantil-Sakauye, and Susan Heiser

## **FOURTH APPELLATE DISTRICT, DIVISION TWO VOLUNTEER ATTORNEY-MEDIATOR SETTLEMENT CONFERENCE PROGRAM**

### **WHAT ARE WE ABOUT?**

The Volunteer Attorney-Mediator Settlement Conference Program settles civil appeals with a minimal use of judicial resources. This is accomplished by using highly respected and experienced local counsel to conduct the settlement conferences. The Settlement Conference Coordinator, supervised by the Presiding Justice, assigns the attorney-mediators, schedules the conferences, and notifies all parties to the appeal. Local rule 4 describes the settlement conference procedures. (Ct. App., Fourth App. Dist., Div. 2, Civil Settlement Conference Proc., rule 4.) Of the appeals that have a settlement conference, over 50% settle, saving the parties and taxpayers a considerable amount of money, time, and resources. The appeals settled include a number of very difficult and complex cases, as well as appeals with related trial court cases that the volunteer attorney-mediators have also settled, thereby preserving both courts' resources. In recognition of the mediators' dedication and success, the program received the prestigious Ralph N. Kleps Improvement in the Administration of the Courts Award in January of 1997.

The settlement process may be initiated by court or counsel. If after evaluation counsel concludes the case is

appropriate for settlement, counsel should submit a written review of all the docketing statements filed in civil appeals. Settlement Conference Information Forms, confidential (SCIF's) are mailed to all parties in about 80% of the civil appeals after the Docketing Statement review, eliminating about 20% of the cases from participation in the settlement program. The Presiding Justice then screens out another 20% to 40% of the cases based on an evaluation of the SCIF's. If a case is accepted for the settlement conference program, the parties are directed to prepare and file Settlement Conference Statements.

A volunteer attorney-mediator is selected based on the attorney-mediator's area of expertise and availability; the parties are then notified of the conference date. To ensure that the attorney-mediator is knowledgeable of the issues on appeal, copies of SCIF's, settlement statements and briefs, if filed, are sent to him/her prior to the conference for their review.

To ensure meaningful settlement negotiations, both parties and counsel must personally appear at the conference unless the court permits a party to be available by telephone in lieu of personal appearance. Generally, one conference is set in the morning, followed by another in the afternoon, with approximately 8 conferences held per month, including new and continued conferences. Some

Survey Response

# California

5<sup>th</sup> District



STATE OF CALIFORNIA  
**Court of Appeal**  
FIFTH APPELLATE DISTRICT

2424 VENTURA STREET  
FRESNO, CALIFORNIA 93721

REBECCA A. WISEMAN  
ASSOCIATE JUSTICE

TELEPHONE (559) 445-5571  
FAX (559) 445-6682  
rebecca.wiseman@jud.ca.gov

January 10, 2012

Mala Malhotra-Ortiz, Esq.  
Acting Director of Mediation  
Maryland Court of Special Appeals  
Courts of Appeal Building, Third Floor  
361 Rowe Boulevard  
Annapolis, Maryland 21401

Dear Ms. Malhotra-Ortiz:

We have received your letter dated December 28, 2011, asking for us to complete a survey relating to the Mediation Program at the Court of Appeal, Fifth Appellate District. Since our mediation program is very new (we only began screening cases for inclusion in September 2011) we are unable to answer many of your questions. Alternatively, however, we are happy to provide you with as much information as possible.

- Our program is staffed by one person, Kelly Hotz, who is our Mediation Coordinator.
- All mediators are sitting members of our court. Seven out of our ten justices are participating as mediators in the program and perform mediations in a solo capacity.
- To date, out of the 39 qualifying appeals filed since September 1, we have selected nine cases for mediation and six mediations have been conducted. With respect to these six mediations, one has settled; three likely will settle within 60 days; and two did not settle. One case settled prior to receiving a mediation hearing date.
- Our mediation program includes only civil cases, with the exception of family law cases. We are not including cases with pro per parties.

Mala Malhotra-Ortiz, Esq.

January 10, 2012

Page 2

- Upon receipt of a qualifying notice of appeal, our Clerk's Office requests counsel to complete a Screening Questionnaire within a certain time period. Either myself or Justice Stephen J. Kane then reviews the questionnaires and decides whether the cases are appropriate for mediation.

- Some of the factors we consider in deciding whether to include a case in the mediation program include:

- (1) whether the case has been appealed before;
- (2) whether the parties indicate they believe mediation would be helpful;
- (3) the length of the trial court proceeding;
- (4) the size of the trial court record; and,
- (5) whether the parties are in an ongoing relationship.

We do not generally take a case where the parties are seeking a ruling to establish a legal precedent; nor do we take a case where there are allegations of any type of violence or where the case is scheduled before a private mediator.

- The parties are not charged for the mediation. The justices volunteer their time.

As you have requested, I am enclosing a copy of our amended Rule 2, which covers the mediation program. Hopefully, it will answer most of your questions about the nuts and bolts of our program.

We appreciate the chance to provide you with this information as we are very optimistic about the success of our program. Thank you for including us.

Very truly yours,



Rebecca A. Wiseman  
Associate Justice

RAW:kh

cc: Hon. Stephen J. Kane  
Kelly Hotz, Mediation Coordinator

## **Rule 2. Mediation Program for Civil Appeals**

The Court has established a Judicial Mediation Program to assist parties to resolve appellate disputes in civil cases the Court finds suitable.

(a) **Rule application:** This rule applies to all civil appeals except those under Welfare and Institutions Code sections 300, 601, and 602 and Family Code section 7802, appeals in conservatorship and guardianship matters, and appeals from original proceedings ancillary to a criminal prosecution.

(b) **Questionnaire:** When a notice of appeal in a civil case is filed in any case to which this rule applies, the Clerk will promptly mail to appellant and respondent the non-confidential Civil Appeal Case Screening Questionnaire. [Downloadable form available on the Court's website <http://www.courts.ca.gov/5dca.htm>.] Within 10 calendar days after the Clerk mails the Civil Appeal Case Screening Questionnaire form, each party must complete, sign, serve and return the Questionnaire to the Court of Appeal.

The Questionnaire will assist the Court in selecting a case for mediation with a sitting justice of this Court. The Court will select a case promptly after the Questionnaire is submitted and before the parties have incurred the expense of record preparation and appellate briefing. The Court recognizes the parties are asked to prepare the Questionnaire very early in the appellate process and may not be able to identify all appellate contentions. The Court will not deem an omission to be a waiver or forfeiture of any claim on appeal.

Failure to timely return the Questionnaire on the appellant's part may result in dismissal of the appeal, without prejudice to reinstatement on a showing of good cause, or in imposition of monetary sanctions pursuant to subdivision (e).

Failure to return the Questionnaire on the respondent's part may result in the appeal being considered for mediation suitability without input from the respondent, or in imposition of monetary sanctions pursuant to subdivision (e).

### **(c) Mediation/Settlement Process:**

(1) Effective upon the filing of any civil notice of appeal to which the rule applies, the provisions of rules 8.121, 8.124 and 8.216 of the California Rules of Court requiring designation of the record, payment of estimated costs for preparation of the record and submission of a proposed briefing schedule are suspended, pending the Court's decision to select or not select the civil appeal for mediation.

These rules do not prohibit the superior court from collecting the deposit required by Government Code section 68926.1 and by California Rules of Court, rule 8.100(b)(2).

(2) Within 14 calendar days after the Court receives the Civil Appeal Case Screening Questionnaires, it will notify the parties whether the Court has or has not selected the civil appeal for mediation. If a civil appeal is selected for mediation, the Court will notify the parties with the name and telephone number of the Justice mediator and a Court contact person, and three dates when the Justice is available for the mediation session. At the same time, the Court will furnish the Justice mediator copies of the Civil Appeal Case Screening Questionnaires. Within 14 calendar days after receipt of the dates the Justice mediator is available, the parties must advise the Court contact person of their scheduling preferences. The Court will promptly select the date for the mediation session and will notify the parties by telephone and in writing.

If a civil appeal is selected for mediation, suspension of rules 8.121, 8.124 and 8.216 of the California Rules of Court will remain in effect until mediation is complete.

If a civil appeal is not selected for mediation, the Court will notify the parties and the superior court, in writing, that the suspension of rules 8.121, 8.124, and 8.216 of the California Rules of Court is terminated. The parties must comply with the requirements of rules 8.121, 8.124 and 8.216 of the California Rules of Court as if the notice of appeal was filed on the date specified in that notice.

If a civil appeal is not selected for mediation, the parties may thereafter submit a stipulation to mediation within the program. The Court will promptly decide whether or not to accept the case into the mediation program and will notify the parties of its decision.

(3) The Justice mediator may, for good cause, continue a mediation session to a date certain. The Justice may also continue the mediation from time to time to allow further opportunity for negotiation and agreement.

(4) The parties shall submit a CONFIDENTIAL Mediation Statement to the Court at least 7 calendar days before the scheduled mediation. The statement shall provide:

(A) The names of parties and their attorneys.

(B) A statement regarding the existence of any applicable insurance, and, if so, the identity of the carrier, the amount of the applicable insurance policy limits and the nature of any insurance coverage disputes/issues.

(C) A statement indicating whether or not a board, council or other committee must approve any settlement, and, if so, the identity of that body.

(D) The identification of any person not named as a party whose consent is necessary to achieve settlement.

(E) The dates and results of prior arbitration, mediation and most recent settlement discussions.

(F) The dates and amounts of any Code of Civil Procedure section 998 offers.

(G) A statement identifying and discussing in detail all facts and law pertinent to the issues of liability and damages involved in the case as to that party.

(H) An itemization of all economic and noneconomic damages claimed by the plaintiff.

(I) A description of any liens and their amounts.

(J) A statement whether there is any claim for recovery of attorney's fees, and, if so, the amount incurred to date.

(K) A statement of any additional information that might assist the Justice mediator.

(5) All parties and their counsel of record must attend all mediation sessions in person with full settlement authority. If a party is not an individual, then a party representative with full authority to settle all appeals and cross-appeals must attend all mediation sessions in person, in addition to counsel. If a party has potential insurance coverage applicable to any of the issues in dispute, a representative of each insurance carrier whose policy may apply also must attend all mediation sessions in person, with full settlement authority. Any exception to this requirement must be approved in writing by the Justice mediator. The Justice mediator may invite participation by any additional person or entity if the mediator concludes that such participation would facilitate mediation.

(6) If completion of mediation does not result in disposition of the appeal, the Court will immediately notify the parties and the superior court that suspension of rules 8.121, 8.124 and 8.216 of the California Rules of Court is terminated. The parties must comply with the requirements of rules 8.121, 8.124 and 8.216 of the California Rules of Court as if the notice of appeal was filed on the date specified in that notice.

(d) **Confidentiality:** Except as otherwise required by law, information disclosed to the Justice mediator, the parties, counsel, or any other participant in the mediation, or in the Mediation Statement, is confidential and must not be disclosed to anyone not participating in the program. The parties are required to sign a confidentiality agreement in a form designated by the Court.

(e) **Sanctions:** Monetary sanctions may be imposed following a noticed motion by a party seeking sanctions for failure to comply with the rules or on the Court's own motion.

(f) **Disqualification of mediator justice:** Any justice who participates in a mediation shall not thereafter participate in the consideration or disposition of the appeal on its merits.

*Amended effective Feb. 10, 2012, adopted effective Sept. 1, 2011; former rule 2, Settlement Conferences in Civil Appeals, repealed Sept. 1, 2011*

Survey Response:  
California  
6<sup>th</sup> District

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established?  
2009
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?  
Local Rule
3. Are mediations ordered by the court or is mediation an optional service provided upon request?  
Orders made after both parties request and agree
4. When did the program begin conducting mediations?  
2010
5. How many civil appeals are administered by your court annually?  
100-130
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.  
Agreement of parties plus feasibility of settlement
7. How many cases were mediated in the most recent year?  
3 – Program is currently not operating due to budget cuts
8. How many cases settled in mediation in the most recent year?  
Full settlements   1        Partial settlements
9. How does your program define a “partial settlement?”  
Anything less than settlement resulting in dismissal of appeal
10. Does your program offer mediation in cases with self-represented parties?  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?  
No
11. Who serves as mediators in your program? How many of such mediators are currently active in your program?  
Justices and volunteer retired judges and appellate practitioners
12. What are the required qualifications for appellate mediators in your program?  
Extensive mediation experience

13. How are mediators selected or designated for a particular case?  
 Mediation Administrator selects
14. Are your cases mediated by one mediator or are they co-mediated?  
 One
15. Please describe generally the mediation approaches used by your mediators, e.g.,  
 facilitative, directive/analytical, mediation combined with neutral case evaluation, and  
 other approaches or services.  
 All, as they see fit
16. Please describe the roles and relationships of judge and non-judge leadership in the  
 direction and management of your appellate mediation program.  
 One Justice administers program with the Administrator, all others have no  
 involvement
17. What is the annual cost of the program?  
 Not determined
18. How many staff persons assist in the management and administration of your  
 appellate mediation program? How many of such persons, if any, also serve  
 as mediators in your program?  
 1 / 3
19. If parties are ordered to mediation in your program, are they permitted to  
 "opt-out" of mediation? Please describe the grounds permitted to opt-out.  
 Yes
20. Is your program authorized to impose sanctions for failure to participate in  
 mediation or for other reasons rising from the mediation process? If so, have such  
 sanctions been imposed? Please describe.  
 Yes
21. What are the major case types you currently mediate, with approximate percentages  
 (most recent year)? (e.g. contract, domestic, tort)
- 1) contract 90 %
- 2) tort 10 %
- 3) \_\_\_\_\_ %
- 4) \_\_\_\_\_ %
- 5) \_\_\_\_\_ %
- 6) \_\_\_\_\_ %

7) \_\_\_\_\_ %

22. If you are able to provide settlement statistics per case type, please do so.

Insufficient data

23. What types of civil cases, if any, are ineligible for mediation in your program?

Pro-per, family, juvenile, probate

24. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

no

25. What do you rate as the most significant successes of your appellate mediation program to date?

26. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

No funding for sufficient staffing

27. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

Insufficient data – program discontinued due to budget constraints

28. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

29. Has your program been evaluated? If so, could you share the results of the evaluation?

No

Mediation Program Name: 6<sup>th</sup> District Court of Appeal – App. Mediation Program

Court: Cal. Court of Appeal, 6<sup>th</sup> App. District

Court Case Jurisdiction: INT App. Ct.

Court Geographic Jurisdiction: 6<sup>th</sup> District of California

Name of Mediation Program Director/Administrator: Marina Meyere / Managing Attorney

Address 333 W. Santa Clara St., Ste. 1060  
San Jose, CA 95113

Telephone: (408) 494-2539

Email: [marina.meyere@jud.ca.gov](mailto:marina.meyere@jud.ca.gov)

Website:

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1/9/12

Marina Meyere  
Name

Marina Meyere  
Signature

Managing Atty.  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

**LOCAL RULES OF THE COURT OF APPEAL  
SIXTH APPELLATE DISTRICT**

**Published pursuant to California Rules of Court, rule 10.1030**

**[Amended effective June 11, 2010]**

**Rule 1. MEDIATION**

**(a) [Application of rule]** This rule is adopted pursuant to rule 8.248, California Rules of Court, and shall apply to all civil appeals filed in the Sixth District Court of Appeal.

**(b) [Purpose of Mediation Program]** To aid the expeditious and just resolution of civil appeals, the Court of Appeal for the Sixth District has established a mediation Program (“Program”). Procedures for mediation and operation of the Program shall be promulgated by and the Program shall be administered by the Administrative Presiding Justice or a designated Supervising Justice, and their designated staff.

**(c) [Scope of Mediation Program]** At the court’s discretion, any civil appeal may be placed in the Program if selected by the court or requested in writing by a party. The Court may, at its discretion, remove an appeal from the Program.

**(d) [Mediators]**

- (1) The court shall maintain a list of attorneys who have developed expertise in specified areas of law, are generally respected in the legal community, and are willing to mediate cases at this court. These attorneys shall be designated as mediators and preside over mediations conducted within the scope of the Program.
- (2) A justice or assigned justice of this court may, at the court’s discretion, be designated as a mediator and preside over a mediation. A justice or assigned justice who participates in a mediation that does not result in complete settlement shall not thereafter participate in any way in the consideration or disposition of the case on its merits.
- (3) A justice or assigned justice of the court will not be disqualified to participate in the consideration or disposition of a case on its merits because he or she has ruled on a request for a mediation, ordered that a mediation be held, signed orders granting relief from default for an act required under this rule, extended or shortened any time period specified in this rule, or otherwise signed an order concerning a procedural aspect of the mediation process.

**(e) [General Mediation Program Procedure]**

- (1) Upon receipt of notice of the filing of a notice of a civil appeal, the clerk of this court shall mail a copy of this rule and a Mediation Statement Form to counsel for all parties.
- (2) The Mediation Statement Form shall be returned to this court within 15 days from the date of mailing. Each party shall also serve a copy of their completed Mediation Statement Form on all other parties.
- (3) The Mediation Statement Form shall be transmitted by the Clerk to the Program and shall not be entered into the court file.
- (4) Within 15 days of receipt of the Mediation Statement Forms, the court shall notify the parties when a case is selected for mediation and furnish the name, address and telephone number of the mediator selected for the mediation. The court shall provide three possible dates for mediation.
- (5) The parties shall meet and confer to agree on the date of mediation, and inform the court within 5 days of the date selected for mediation. The court will issue written notice of the date and time of the mediation. The mediator, with the approval of the Court, may, for good cause, postpone or continue a mediation session to a date certain.
- (6) The Court may replace a selected mediator upon written request by a party supported by a showing of good cause or upon request of the mediator.
- (7) Immediately upon acceptance of a case into the Program, all further proceedings, including the filing of briefs, shall be suspended for 90 days. However, this rule shall not suspend preparation of the appellate record unless a specific order is issued directing suspension of record preparation. Upon the expiration of the stay, the appeal shall be reinstated to active status on the court's docket. Any request for further stay shall be granted only upon written application to the court and only upon a showing of good cause.
- (8) Mediation services shall be furnished by the Court without fee to the parties for up to a total of 4 hours. Any further mediation services shall be at the discretion of the mediator, on such terms as the mediator and the parties may agree upon, and consistent with the provisions of this rule.

**(f) [Mediation Hearing and Sanctions]**

- (1) All parties and their counsel of record must attend all mediation sessions in person with full settlement authority. If the party is not an individual, then a party representative with full authority to settle all appeals and cross-appeals must attend all mediation sessions in person, in addition to counsel. If a party has potential insurance coverage applicable to any of the issues in dispute, a representative of each insurance carrier whose policy may apply must also attend all mediation sessions in person, with full settlement authority. Any exception to this requirement must be approved in writing by the Court. Failure to attend may result in the imposition of sanctions against any party or counsel, including dismissal.
- (2) The mediator may invite parties to the action who are not parties to the appeal, or any person who has an interest in the action, to attend the mediation if it appears to the mediator that their presence may facilitate settlement of the case. Any party to the appeal may serve and file a written request for the attendance of such a party or person at least 15 days before the mediation.
- (3) Counsel shall confer with their clients in advance and be thoroughly familiar with the case and prepared to present their contentions in detail.
- (4) The presiding justice, a justice designated by the presiding justice, or the mediator may excuse a client's personal attendance upon request and a showing that hardship or unusual

circumstances make the client's attendance impossible or impractical. If personal attendance is excused, counsel either shall have obtained full authority to agree to a settlement that binds the client or the client shall be available for consultation by telephone.

- (5) The mediator may require parties or their counsel to furnish information, documents, records or other items specified by the mediator.

**(g) [Post Mediation Procedure]**

- (1) No later than 10 days after completion of mediation, the mediator shall submit to the Court a Mediation Attendance Form, listing all participants in the mediation, and a brief summary of the procedural outcome of the mediation.
- (2) Each party and their counsel shall separately complete and submit to the Court evaluations of the mediation and the mediator on a form provided by the Court.
- (3) The parties and their counsel shall promptly take the steps necessary to implement the agreements reached in mediation. An appellant who has settled must immediately serve and file a notice of settlement in the Court of Appeal and, thereafter, must seek abandonment or dismissal of the appeal as provided in the California Rules of Court. The notice of settlement shall specify the allocation of costs on appeal and state whether the remittitur is to issue immediately.
- (4) Upon receiving notification that no agreement was reached at mediation, this court will immediately vacate the stay and reinstate the appeal to active status on the court's docket.

**(h) [Confidentiality]** Except as otherwise required by law, information disclosed to the mediator, the parties, counsel, or any other participant in the mediation, shall be confidential and shall not be disclosed to anyone not participating in the mediation Program.

**(i) [Ethical Standards]** Mediators shall adhere to the Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases set forth in the California Rules of Court.

**(j) [Appellate Process]** Parties and counsel shall comply with all rules applicable to processing appeals while concurrently participating in the mediation Program.

**(k) [Sanctions]** Monetary sanctions may be imposed by the Administrative Presiding Justice or Supervising Justice for failure to comply with these rules.

*Rule 1 amended effective June 11, 2010; adopted effective February 5, 2010; former Rule 1 repealed effective March 2, 2007.*

Case Name: \_\_\_\_\_  
Date Notice of Appeal Filed: \_\_\_\_\_

Case Number: \_\_\_\_\_

## COURT OF APPEAL, SIXTH APPELLATE DISTRICT MEDIATION STATEMENT FORM

*You must return this form to the Clerk of the Court of Appeal within 15 days from the date it was mailed to you. (Ct. App., Sixth Dist., Local Rules, rule 1, subd. (e)(2).)*

**ANY INFORMATION PROVIDED HEREIN WILL BE USED FOR THE SOLE PURPOSE OF SCREENING YOUR APPEAL FOR INCLUSION IN THE MEDIATION PROGRAM. IT WILL REMAIN CONFIDENTIAL AND WILL NOT BE ENTERED IN THE COURT DOCKET OR FILE. THE COURT WILL NOT DEEM AN OMISSION FROM THIS STATEMENT TO BE A WAIVER OR FORFEITURE OF ANY CLAIM ON APPEAL.**

*(Check all that Apply)*

*This Form is submitted on behalf of:*  Appellant  Respondent  Cross-Appellant  Cross-Respondent

Your Name: \_\_\_\_\_

Represent:  Self  (party:) \_\_\_\_\_

I/We **DO NOT** wish to participate in appellate mediation. (**YOU MAY STOP HERE**-you do not need to fill in the rest of this form)

I/We wish to be considered for inclusion in the Court's Mediation Program. (Please complete the rest of this form as thoroughly as possible) \*\*Due to budgetary constraints not all cases wishing to participate in mediation will be selected.

**Subject Matter of the Appeal (Check all that apply):**

Attorney's Fees  Construction  Family Law  Intellectual Property  Personal Injury  Prof. Negligence

Business/Contract  Employment  Insurance  Medical Malpractice  Probate  Real Estate

Other (specify): \_\_\_\_\_

Trial Court: \_\_\_\_\_ Trial Judge: \_\_\_\_\_

**The appealable judgment/order resulted from:**

Jury Trial  Court Trial  Summary Judgment  Demurrer  Dismissal  Nonsuit  Arbitration Award

Mandamus  Order (specify): \_\_\_\_\_  Other (specify): \_\_\_\_\_

We have previously participated in some form of ADR  We have not participated in ADR

Please Specify: \_\_\_\_\_

Provide a concise statement of the case, including a brief factual and procedural history and list the issues you expect to raise on appeal (if any): (use additional sheets if necessary)

Please explain briefly why this appeal should be selected for the mediation program.

Identify all persons, other than the parties, whose agreement is necessary for the settlement of this appeal and any related litigation or dispute (e.g., an insurance adjuster, spouse, or lien holder):

**Please attach a separate sheet with your contact information, including name, firm name, address, phone, fax and email address.**

# California Rules of Court, Sixth Appellate District

## Rule 1. MEDIATION

6/1/2010

- (a) [Application of rule] This rule is adopted pursuant to rule 8.248, California Rules of Court, and shall apply to all civil appeals filed in the Sixth District Court of Appeal.
- (b) [Purpose of Mediation Program] To aid the expeditious and just resolution of civil appeals, the Court of Appeal for the Sixth District has established a mediation Program ("Program"). Procedures for mediation and operation of the Program shall be promulgated by and the Program shall be administered by the Administrative Presiding Justice or a designated Supervising Justice, and their designated staff.
- (c) [Scope of Mediation Program] At the court's discretion, any civil appeal may be placed in the Program if selected by the court or requested in writing by a party. The Court may, at its discretion, remove an appeal from the Program.
- (d) [Mediators]
- (1) The court shall maintain a list of attorneys who have developed expertise in specified areas of law, are generally respected in the legal community, and are willing to mediate cases at this court. These attorneys shall be designated as mediators and preside over mediations conducted within the scope of the Program.
  - (2) A justice or assigned justice of this court may, at the court's discretion, be designated as a mediator and preside over a mediation. A justice or assigned justice who participates in a mediation that does not result in complete settlement shall not thereafter participate in any way in the consideration or disposition of the case on its merits.
  - (3) A justice or assigned justice of the court will not be disqualified to participate in the consideration or disposition of a case on its merits because he or she has ruled on a request for a mediation, ordered that a mediation be held, signed orders granting relief from default for an act required under this rule, extended or shortened any time period specified in this rule, or otherwise signed an order concerning a procedural aspect of the mediation process.
- (e) [General Mediation Program Procedure]
- (1) Upon receipt of notice of the filing of a notice of a civil appeal, the clerk of this court shall mail a copy of this rule and a Mediation Statement Form to counsel for all parties.
  - (2) The Mediation Statement Form shall be returned to this court within 15 days from the date of mailing. Each party shall also serve a copy of their completed Mediation Statement Form on all other parties.
  - (3) The Mediation Statement Form shall be transmitted by the Clerk to the Program and shall not be entered into the court file.
  - (4) Within 15 days of receipt of the Mediation Statement Forms, the court shall notify the parties when a case is selected for mediation and furnish the name, address and telephone number of the mediator selected for the mediation. The court shall provide three possible dates for mediation.
  - (5) The parties shall meet and confer to agree on the date of mediation, and inform the court within 5 days of the date selected for mediation. The court will issue written notice of the date and time of the mediation. The mediator, with the approval of the Court, may, for good cause, postpone or continue a mediation session to a date certain.
  - (6) The Court may replace a selected mediator upon written request by a party supported by a showing of good cause or upon request of the mediator.
  - (7) Immediately upon acceptance of a case into the Program, all further proceedings, including the filing of briefs, shall be suspended for 90 days. However, this rule shall not suspend preparation of the appellate record unless a specific order is issued directing suspension of record preparation. Upon the expiration of the stay, the appeal shall be reinstated to active status on the court's docket. Any request for further stay shall be granted only upon written application to the court and only upon a showing of good cause.
  - (8) Mediation services shall be furnished by the Court without fee to the parties for up to a total of 4 hours. Any further mediation services shall be at the discretion of the mediator, on such terms as the mediator and the parties may agree upon, and consistent with the provisions of this rule.
- (f) [Mediation Hearing and Sanctions]
- (1) All parties and their counsel of record must attend all mediation sessions in person with full settlement authority. If the party is not an individual, then a party representative with full authority to settle all appeals and cross-appeals must attend all mediation sessions in person, in addition to counsel. If a party has potential insurance coverage applicable to any of the issues in dispute, a representative of each insurance carrier whose policy may apply must also attend all mediation sessions in person, with full settlement authority. Any exception to this requirement must be approved in writing by the Court. Failure to attend may result in the imposition of sanctions against any party or counsel, including dismissal.
  - (2) The mediator may invite parties to the action who are not parties to the appeal, or any person who has an interest in the action, to attend the mediation if it appears to the mediator that their presence may facilitate settlement of the case. Any party to the appeal may serve and file a written request for the attendance of such a party or person at least 15 days before the mediation.
  - (3) Counsel shall confer with their clients in advance and be thoroughly familiar with the case and prepared to present their contentions in detail.
  - (4) The presiding justice, a justice designated by the presiding justice, or the mediator may excuse a client's personal attendance upon request and a showing that hardship or unusual circumstances make the client's attendance impossible or impractical. If personal attendance is excused, counsel either shall have obtained full authority to agree to a settlement that binds the client or the client shall be available for consultation by telephone.
  - (5) The mediator may require parties or their counsel to furnish information, documents, records or other items specified by the mediator.
- (g) [Post Mediation Procedure]
- (1) No later than 10 days after completion of mediation, the mediator shall submit to the Court a Mediation Attendance Form, listing all participants in the mediation, and a brief summary of the procedural outcome of the mediation.
  - (2) Each party and their counsel shall separately complete and submit to the Court evaluations of the mediation and the mediator on a form provided by the Court.
  - (3) The parties and their counsel shall promptly take the steps necessary to implement the agreements reached in mediation. An appellant who has settled must immediately serve and file a notice of settlement in the Court of Appeal and, thereafter, must seek abandonment or dismissal of the appeal as provided in the California Rules of Court. The notice of settlement shall specify the allocation of costs on appeal and state whether the remittitur is to issue immediately.
  - (4) Upon receiving notification that no agreement was reached at mediation, this court will immediately vacate the stay and reinstate the appeal to active status on the court's docket.
- (h) [Confidentiality] Except as otherwise required by law, information disclosed to the mediator, the parties, counsel, or any other participant in the mediation, shall be confidential and shall not be disclosed to anyone not participating in the mediation Program.
- (i) [Ethical Standards] Mediators shall adhere to the Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases set forth in the California Rules of Court.
- (j) [Appellate Process] Parties and counsel shall comply with all rules applicable to processing appeals while concurrently participating in the mediation Program.
- (k) [Sanctions] Monetary sanctions may be imposed by the Administrative Presiding Justice or Supervising Justice for failure to comply with these rules.

Rule 1 amended effective June 11, 2010; adopted effective February 5, 2010; former Rule 1 repealed effective March 2, 2007.

Survey Response

# Connecticut

CT

STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established? **1987**
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? **Rule - see attached Practice Book § 63-10**
3. Are mediations ordered by the court or is mediation an optional service provided upon request? **Compulsory**
4. When did the program begin conducting mediations? **1987**
5. How many civil appeals are administered by your court annually? **Approx. 1000**
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process. **See § 63-10**
7. How many cases were mediated in the most recent year? **457**
8. How many cases settled in mediation in the most recent year? **Approx. 30%, down from approx. 36% over the previous 4 years**  
Full settlements **Approx. 30%** Partial settlements **Not tracked**
9. How does your program define a "partial settlement?" **N/A**
10. Does your program offer mediation in cases with self-represented parties? **No, unless requested by letter and approved by administrative judge for the program (see § 63-10)** If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? **N/A** Does your program employ different policies or screening in cases involving self-represented parties? **N/A**
11. Who serves as mediators in your program? **Retired trial court and appellate judges -**  
How many of such mediators are currently active in your program? **21**
12. What are the required qualifications for appellate mediators in your program? **See above**
13. How are mediators selected or designated for a particular case? **Randomly**
14. Are your cases mediated by one mediator or are they co-mediated? **One**
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services. **Determined by mediator**
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program. **Non-judge staff administers the program under the direction of the administrative judge**
17. What is the annual cost of the program? **No direct cost**
18. How many staff persons assist in the management and administration of your appellate mediation program? **8** How many of such persons, if any, also serve as mediators in

your program? **None**

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? **No** Please describe the grounds permitted to opt-out. **N/A**
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? **Yes** If so, have such sanctions been imposed? Please describe. **Seldom used - see attached Practice Book § 85-2 (7)**
21. What are the major case types you currently mediate, with approximate percentages? **No records kept of such breakdowns**
- 21a. If you are able to provide settlement statistics per case type, please do so. **N/A (see above)**
22. What types of civil cases, if any, are ineligible for mediation in your program? **Juvenile, MV license suspension, habeas, self-represented parties (see question 10 above)**
23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? **No** If so, please describe. **N/A**
24. What do you rate as the most significant successes of your appellate mediation program to date? **Settlement of approx. 30% of cases eligible for mediation**
25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country? **Self-represented parties**
26. How has the program affected the workload of your court? **By reducing the number of eligible civil cases going to oral argument by approx. 30%** Has your court been able to dispose of more cases annually? **Yes** What effect, if any, has your program had on the need for additional judicial resources? **Minimal additional resources**
27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.
28. Has your program been evaluated? **No**

Mediation Program Name: **Preargument Conference Program**

Court: **Supreme Court and Appellate Court**

Court Case Jurisdiction: **see above**

Court Geographic Jurisdiction: **see above**

Name of Mediation Program Director/Administrator: **Hon. Joseph H. Pellegrino**

Address: **95 Washington Street, Hartford, CT 06106**

Telephone: **(860) 548-2850**

Email: **[Joseph.Pellegrino@jud.ct.gov](mailto:Joseph.Pellegrino@jud.ct.gov)**

Website: **[www.jud.ct.gov](http://www.jud.ct.gov)**

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1-25-12

Joseph H Pellegrino  
Name

Joseph H Pellegrino  
Signature

Administrator  
Title

### **Sec. 63-10. Preargument Conferences**

The chief justice or the chief judge or a designee may, in cases deemed appropriate, direct that conferences of the parties be scheduled in advance of oral argument. All civil cases are eligible for preargument conferences except habeas corpus appeals; appeals where a party is self-represented; appeals involving juveniles, such as delinquency and termination of parental rights cases; and appeals from the suspension of a motor vehicle license due to operating under the influence of liquor or drugs. A party in an exempt case may request a preargument conference by writing a letter, certified to all parties, to the appellate clerk explaining why the case should not be exempt. The chief justice may designate a judge trial referee or senior judge to preside at a conference. The scheduling of or attendance at a preargument conference shall not affect the duty of the parties to adhere to the times set for the filing of briefs. Failure of counsel to attend a preargument conference may result in the imposition of sanctions under Section 85-2. Unless other arrangements have been approved in advance by the conference judge, parties shall be present at the conference site and available for consultation. When a party against whom a claim is made is insured, an insurance adjuster for such insurance company shall be available by telephone at the time of such preargument conference unless the conference judge, in his or her discretion, requires the attendance of the adjuster at the conference. The conference proceedings shall not be brought to the attention of the court by the presiding officer or any of the parties unless the conference results in a final disposition of the appeal.

The following matters may be considered:

- (1) Possibility of settlement;
- (2) Simplification of issues;
- (3) Amendments to the preliminary statement of issues;
- (4) Transfer to the supreme court;
- (5) Timetable for the filing of briefs;
- (6) En banc review; and
- (7) Such other matters as the conference judge shall consider appropriate.

All matters scheduled for a preargument conference before a judge trial referee are referred to that official by the chief court administrator pursuant to General Statutes § 52-434a, which vests judge trial referees with the same powers and jurisdiction as superior court judges and senior judges, including the power to implement settlements by opening and modifying judgments.

(P.B. 1978-1997, Sec. 4103.) (Amended July 21, 1999, to take effect Jan. 1, 2000; amended April 6, 2011, to take effect Jan. 1, 2012.)

**HISTORY—2012:** Prior to 2012, the first sentence of this section read: "The chief justice or the chief judge or a designee may, in cases deemed appropriate, direct the appellate clerk to schedule conferences of the parties in advance of oral argument." In 2012, what are now the second and third sentences were added.

**COMMENTARY—2012:** The first sentence of the rule has been amended to delete the reference to the appellate clerk's office as being the entity responsible for scheduling preargument conferences. In fact, the conference judges, not the appellate clerk's office, schedule preargument conferences. The two new sentences list matters that are not eligible for preargument conferences and create a procedure for requesting a conference in an exempt case.

**Sec. 85-2. Other Actions Subject to Sanctions**

Actions which may result in the imposition of sanctions include, but are not limited to, the following:

- (1) Failure to comply with rules and orders of the court.
- (2) Filing of any papers which unduly delay the progress of an appeal.
- (3) Presentation of unnecessary or unwarranted motions or opposition to motions.
- (4) Presentation of unnecessary or unwarranted issues on appeal.
- (5) Presentation of a frivolous appeal or frivolous issues on appeal.
- (6) Presentation of a frivolous defense or defenses on appeal.
- (7) Failure to attend preargument settlement conferences.
- (8) Disregard of rules governing withdrawal of appeals.
- (9) Repeated failures to meet deadlines.

Offenders will be subject, at the discretion of the court, to appropriate discipline, including the prohibition against appearing in the court or filing any papers in the court for a reasonable and definite period of time, the imposition of a fine pursuant to General Statutes § 51-84, and costs and payment of expenses, together with attorney's fees to the opposing party.

The sanction of prohibition against filing any papers in the court shall not prevent an offender from filing a motion for reconsideration of that sanction within seven days.

Offenders subject to such discipline include both counsel and pro se parties and, if appropriate, parties represented by counsel.

(P.B. 1978-1997, Sec. 4184B.)

**\* From the Handbook of Connecticut Appellate Procedure**

**SECTION 4**

**PREARGUMENT CONFERENCES**

Preargument conferences are held pursuant to P.B. § 63-10 and are designed to reduce issues and settle cases. The conferences, which are conducted by judge trial referees and senior judges, provide an opportunity for a jurist to look closely at the issues on appeal and help the attorneys identify their strongest and weakest claims. In addition, preargument conferences provide the parties with an opportunity to discuss with the judge the possible settlement of the case or transfer of the appeal from the Appellate Court to the Supreme Court. The preargument conference judge may recommend that a case be transferred pursuant to P.B. § 65-1.

Preargument conference statements must be filed along with the appeal form in all non-criminal cases. See P.B. § 63-4(a)(5). The preargument statement must be accompanied by a copy of the trial court's written memorandum of decision, if there was one, or a transcript of the trial court's oral decision, if a transcript is available. In addition, the issues that the appellant plans to raise on appeal must be appended to the statement. After the filing of the preargument statement, the parties, in cases deemed appropriate by the Chief Justice, Chief Judge or designee, are informed by letter of the date and location of the conference.

Clients are required to attend preargument conferences unless excused. The rules require that they be present to consult with their attorneys at the courthouse where the conference is held. See P.B. § 63-10. In the event that a party against whom a claim is made is insured, the insurer must be available by phone, although the preargument conference judge may require the adjuster to be present at the conference site. The courts can use their sanctioning power to ensure that participants comply with the rules pertaining to preargument conferences.

A preargument conference will generally begin with a brief discussion of the case, its procedural history, and the trial court's ruling. Because the presiding judge may ask questions about the issues on appeal and the authorities supporting the positions of both sides, it is important for the attorneys to be thoroughly familiar with the case and particularly with what happened at trial. It is essential that the attorneys discuss the issues and the settlement potential of the case with their clients before the conference.

Experience has shown that settlement is more likely when the conference is held before the parties have invested time and money in the preparation of their appellate briefs. Consequently, if the conference cannot be held before the appellant's brief is due to be filed, the due date for that brief will be extended until 45 days after the first conference has taken place.

If a case does not settle and proceeds to argument, no discussion of the preargument conference may be presented to either the Supreme or Appellate Court.

Survey Response

**Florida**

FL

### STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established? 2001
  
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? Administrative Order of Supreme Court of Florida and Administrative Order of our court (Please see attached)
  
3. Are mediations ordered by the court or is mediation an optional service provided upon request? - Ordered by the court
  
4. When did the program begin conducting mediations? - 2001
  
5. How many civil appeals are administered by your court annually? 2011 approx 440
  
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process. All final civil appeals with counsel on both sides receive a Mediation Questionnaire asking them to explain why they think the case is or is not appropriate for mediation. A screening judge then reviews the questionnaires and decides whether to order the case to mediation.
  
7. How many cases were mediated in the most recent year? approx 125
  
8. How many cases settled in mediation in the most recent year? - 32 settled in mediation - 11 dismissed after mediation (impasse) - 44 cases still active in court  
  
Full settlements   31              Partial settlements   1
  
9. How does your program define a "partial settlement?" Resolution of any issues short of a complete resolution of the appeal
  
10. Does your program offer mediation in cases with self-represented parties? If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?  
a) No, both parties must have counsel.  
b) n/a  
c) n/a
  
11. Who serves as mediators in your program? How many of such mediators are currently active in your program? There are 346 appellate mediators approved by the Florida Supreme Court's Dispute Resolution Center.

12. What are the required qualifications for appellate mediators in your program? Mediators must complete a one-day appellate mediation training program, and also be certified by the Florida Supreme Court as civil, family, or dependency mediators.

13. How are mediators selected or designated for a particular case? Both parties are given the opportunity to mutually agree on a mediator from our approved list of appellate mediators, if they cannot, a mediator is randomly selected.

14. Are your cases mediated by one mediator or are they co-mediated? - One mediator

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services. Generally facilitative, pursuant to rules approved by the Supreme Court of Florida.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program. Three judges serve as screening Judges. A mediation coordinator handles the administrative aspects of the program. Personnel in the Clerk's office send out the mediation questionnaire.

17. What is the annual cost of the program? 2011 - \$85.09 supplies + \$1073.24 postage and salary of mediation coordinator \$30,300.00 = \$31,458.33

18. How many staff persons assist in the management and administration of your Appellate mediation program? How many of such persons, if any, also serve as mediators in your program? Primarily the mediation coordinator, who does not serve as a mediator in the program.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out. "Opt-out" generally not allowed. A party can file a motion to reconsider on order requiring mediation, where it will be ruled on by the screening judge.

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe. Yes, sanctions are authorized and have been imposed. Attorneys have been required to respond to an Order to Show Cause or appear before a panel of judges to explain their actions. Sanctions imposed have included payment of mediation fees and attorney fees and in one instance, a requirement to do pro bono work for a legal aid society.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

- |  |                 |
|--|-----------------|
| 1) Foreclosure/real estate                                 | 24% - 82 cases  |
| 2) Contract  | 15% - 68 cases  |
| 3) Personal injury/wrongful death                          | 12% - 54 cases  |
| 4) Family w/children                                       | 8% - 34 cases   |
| 5) Family w/o children                                     | 8% - 34 cases   |
| 6) Insurance   | 4% - 17 cases   |
| 6) Other (tort/eminant domain/employment/probate/guardian) | 29% - 127 cases |

21. If you are able to provide settlement statistics per case type, please do so. Not available

22. What types of civil cases, if any, are ineligible for mediation in your program? None

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe. No

24. What do you rate as the most significant successes of your appellate mediation program to date? Foreclosure, contract and personal injury cases.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country? None

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

We have seen a 30% success rate for cases that are sent to mediation, reducing the court's workload.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program. (Please see attached)

28. Has your program been evaluated? If so, could you share the results of the evaluation? The program has not been evaluated.

Mediation Program Name: -

Court: Fifth District Court of Appeal

Court Case Jurisdiction: 5th, 7th, 9th and 18th Circuit

Court Geographic Jurisdiction: Central Florida

Name of Mediation Program Director/Administrator:

Heather Brooke

Address: 300 South Beach Street, Daytona Beach, Florida 32114

Telephone: (386) 947-1547

Email: brookeh@flcourts.org

Website: www.5dca.org

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date January 20, 2012

The Honorable William D. Palmer

Name

A handwritten signature in black ink, appearing to read "William D. Palmer", written over a horizontal line.

Signature

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, Mala.Ortiz@mdcourts.gov, phone 410-260-3715, fax 410-260-1547.

# Supreme Court of Florida

No. AOSC01-17

IN RE: APPELLATE MEDIATION PROGRAM IN  
THE FIFTH DISTRICT COURT OF APPEAL

## ADMINISTRATIVE ORDER

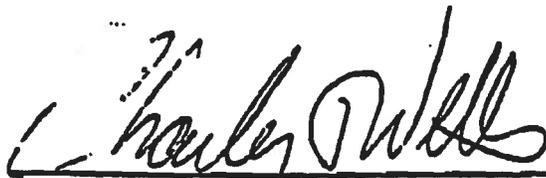
The Florida Supreme Court hereby approves the appellate mediation program in the Fifth District Court of Appeal (hereinafter the Court). The Court shall conduct the program in accordance with the following procedures:

The Court may direct the parties or attorneys for the parties to engage in mediation to consider the possibility of settlement and such other matters as may aid the parties in the disposition of the case, all in accordance with the Florida Rules for Certified and Court-Appointed Mediators. The mediator shall (1) set forth the procedure and time limits for conducting mediation, consistent with any directive of the Court, in light of the particular circumstances of each case; and (2) report any agreement made by the parties as to any of the matters considered, and or impasse, and complete any evaluations of the process required by the Court.

Any agreement reached (and if necessary approved by the trial court) shall be

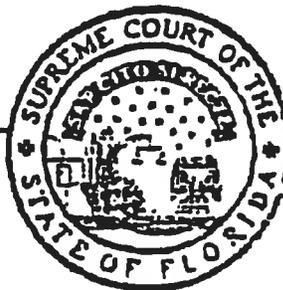
determinative of the issues involved unless modified by the Court to prevent manifest injustice. Mediation shall be conducted by a family mediator, a circuit court mediator, or a dependency mediator certified by the Florida Supreme Court, who has taken an appellate mediation training session sponsored or approved by the Court, and who has applied to so serve pursuant to the Court's conditions and requirements. All proceedings involving appellate mediation shall be confidential in a manner consistent with chapter 44, Florida Statutes.

DONE AND ORDERED at Tallahassee, Florida, on April 16, 2001.



Chief Justice Charles T. Wells

ATTEST:

  
Thomas D. Hall, Clerk of Court

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT, DAYTONA BEACH, FLORIDA**

**No. AO5DCA06-03**

**IN RE:       IMPLEMENTING APPELLATE MEDIATION PROGRAM**

**ADMINISTRATIVE ORDER**

Pursuant to the affirmative vote of the judges of this Court and the approval of the Florida Supreme Court by Administrative Order dated April 16, 2001, the Court hereby memorializes the following procedures for administration of appellate mediation in civil cases.

1. The Court hereby authorizes the mediation program as set forth herein.
2. The Court shall select civil cases from throughout the district for mediation as it deems appropriate. A motion for mediation, or to opt out of mediation for good cause, can be made by any party for the Court's consideration. Mediation may be ordered in any cases in which all parties stipulate in writing for mediation.
3. No mediators will be employed by the Court. All mediators conducting mediations must be certified by the Florida Supreme Court as family, circuit civil or dependency mediators, must have taken an appellate mediation training session sponsored by the Court, and must have applied and agreed to conduct the mediations pursuant to the requirements of the Court. Mediation shall be conducted by a mediator selected by the parties, at the cost of the parties. If the parties cannot

agree on a mediator, the Court will appoint a mediator and establish the terms of the mediation. Upon motion, to avoid financial hardship and for good cause shown, the Court can appoint a pro bono mediator from the Court's list of mediators who have qualified to serve in that capacity, as stated above. The mediator selected may direct the parties and attorneys for the party to appear before him or her for mediation, and may direct such other actions as may aid the parties in resolving the case.

4. The parties will receive an automatic extension of all deadlines upon receipt of the mediation questionnaire from the court. In the event the court orders the case to mediation, all appellate deadlines will be tolled for up to 45 days until the mediation is completed, unless there is an approved extension of time for special circumstances. In the event that the case is not accepted for mediation, all deadlines will begin to run from the date of the order informing the parties that the case has not been accepted for mediation.

5. The parties shall be required to submit preliminary mediation information and mediation summaries as directed by the Mediator.

6. Mediation sessions will be conducted in person at a location selected by the mediator, or by a telephone conference if permitted by the Court. The mediation session shall be completed within 45 days after the order directing mediation, absent a court order to the contrary.

7. Parties with full settlement authority and counsel are required to attend mediation, unless excused from attendance by the Court. Failure of an attorney or party to appear for a duly scheduled mediation conference or otherwise comply with the appellate mediation program procedures, without good cause, may result in the

imposition of sanctions by this Court, including attorney's fees, the striking of any party's briefs, denial of oral argument or dismissal of the appeal.

8. All appellate mediation sessions shall be confidential as provided by Florida Law, and the mediation will be conducted in accordance with the Florida Rules For Certified and Court-Appointed Mediators.

9. All written notices with respect to mediation issued by this Court shall have the full force and authority of an order of this Court, and sanctions may be imposed by the Court for any violation thereof.

10. Based on any agreement reached in mediation, the Court may enter an appropriate order which will control all subsequent proceedings, unless modified by the Court to prevent manifest injustice.

DONE AND ORDERED in Daytona Beach, Florida, on August 14, 2006.

  
\_\_\_\_\_  
Chief Judge, Robert J. Pleus Jr.

ATTEST:

  
\_\_\_\_\_  
SUSAN WRIGHT  
CLERK



# Supreme Court of Florida

No. AOSC11-1

IN RE: PROCEDURES GOVERNING CERTIFICATION OF MEDIATORS

## ADMINISTRATIVE ORDER

Chapter 44, Florida Statutes, places in the Supreme Court of Florida the responsibility for certifying all persons who are eligible to receive court referrals for mediation. Pursuant to Article V, section 2(a) of the Florida Constitution, and Chapter 44, Florida Statutes, the Court adopted rules 10.100, 10.105 and 10.110, Florida Rules for Certified and Court-Appointed Mediators, specifying the requirements for such mediators.

This administrative order is adopted to update In Re: Procedures Governing Certification of Mediators, No. AOSC08-23 (Fla. June 30, 2008), which governs the certification process for mediators, and to incorporate the provisions of In Re: Amendments to the Florida Rules of Appellate Procedure and The Florida Rules for Certified and Court-Appointed Mediators, 41 So. 3d 161 (Fla. July 1, 2010), which provides for appellate mediation certification. The provisions of this order supersede all previous orders on this subject.

## **I. Initial Certification**

### **A. Application**

The certification application provided by the Dispute Resolution Center (hereinafter "Center") shall be completed by all individuals seeking certification, in accordance with the following procedures:

The Center shall provide, to all individuals who have successfully completed a certified mediation training program, an application and information on the certification requirements.

An application shall be complete upon filing. However, if incomplete upon filing, such incomplete application may not remain pending for a period longer than one year. Any application pending more than one year from the date of original filing shall be denied and returned to the applicant. The one-year period shall be tolled during any review by the Center or Mediator Qualifications Board.

Any material misrepresentation by the applicant in the application process shall be automatically referred to the Mediator Qualifications Board.

### **B. Certification Requirements**

To obtain certification, applicants for county, family, circuit, and dependency mediator certification shall meet all certification requirements in rules 10.100, 10.105 and 10.110, Florida Rules for Certified and Court-Appointed

Mediators, and this order. Applicants for appellate mediator certification shall meet all certification requirements in rules 10.100 and 10.110, Florida Rules for Certified and Court-Appointed Mediators, and this order.

#### **Point Categories**

**Mediation Training.** Applicants must complete a Florida Supreme Court certified training program for the type of mediation for which they are seeking certification. To qualify as a Florida Supreme Court certified training program, a training program must satisfy all of the requirements of In Re: Mediation Training Standards and Procedures, No. AOSC10-51 (Fla. Sept. 17, 2010), or any successor order.

Applicants shall have completed the requisite certified mediation training program within two years immediately preceding the date of application.

An exception to the requirement that certified appellate mediation training be completed in the two years immediately preceding application will be given to applicants who completed an appellate mediation training program conducted by the Fifth District Court of Appeal in the 10 years preceding the adoption of this order; who were certified in circuit, family, or dependency mediation at the time of training and have been continuously certified in any of the three underlying certifications since that time; and who apply for appellate mediator certification on or before December 31, 2012.

**Education/Mediation Experience.** Any applicant relying on an educational degree shall provide evidence of such degree in the form of a formal transcript mailed directly from the educational institution to the Center. Such applicant must also enclose a copy of the diploma evidencing the completion of the course of study and the degree. In the event that such documentation is unavailable, the applicant must submit another form of appropriate documentation, such as a sworn affidavit.

Any applicant relying on years of mediation experience shall include an affidavit attesting to such experience.

**Mentorship.** Mentorship shall include observing mediations conducted by certified mediators and conducting mediations under the supervision and observation of certified mediators. The mentorship requirements for those seeking certification shall be performed in a manner consistent with the following requirements:

The responsibility of structuring a mentorship rests with each trainee. The trainee shall not receive any fees for any case which the trainee utilizes to complete the required mentorship.

All duly certified mediators are required to allow, upon request, a minimum of two mediation observations or supervised mediations per year. The certified mediator shall not charge the trainee any fees to observe

mediation conducted by the certified mediator, but may charge a reasonable fee for observing and supervising a trainee while the trainee conducts mediation. In addition, the certified mediator shall be entitled to any compensation paid for the mediation.

The certified mediator shall remain in control of the case.

For an applicant to be awarded mentorship points the applicant must work with at least two different certified mediators and the mediations involved must be of the type for which certification is sought.

The confidentiality and privileges provided in the Mediation Confidentiality and Privilege Act, sections 44.401-44.406, Florida Statutes, shall apply when a trainee serves as a mediator, co-mediator, or observer.

State-funded trial court mediation programs shall assist trainees in completing their mentorship requirements.

Applicants shall provide original signatures of all mentors in relation to all mentorship activity claimed.

A trainee shall not fulfill any of the mentorship requirements before beginning the certified mediation training program which will be used for the pending application. The observation requirement may be completed prior to the conclusion of the certified mediation training program; however, in no case shall an observation which is part of the training be used to fulfill

the observation requirements for certification. A supervised mediation shall only be conducted by a trainee after the completion of a certified mediation training program.

### Mediation Observations

For each observation required for certification, the trainee must observe an entire session of the type of mediation for which certification is sought, conducted by a certified mediator in the same category for which certification is sought. The observation requirement shall not be satisfied by any individual who is a party, participant, or representative in the mediation. An appellate or pre-suit mediation may be utilized for observation purposes if (1) it is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and (2) if it is conducted by a certified mediator of the type for which certification is sought. A federal court mediation conducted by a certified circuit court mediator may be utilized to fulfill a circuit court mentorship. Administrative agency mediations conducted under rules and procedures other than those of the state trial courts may not be utilized to fulfill the mentorship requirements. Because appellate certification requires an underlying certification in family, circuit, or dependency mediation, there is no additional mentorship requirement for appellate certification.

## Supervised Mediations

A supervised mediation is defined as one in which the trainee conducts a mediation under the supervision and observation of a certified mediator or the trainee co-mediate with a certified mediator. At the conclusion of the mediation, the mentor shall determine if the trainee made a substantial contribution to the mediation. If so, the case may qualify as a "supervised" mediation. If not, the case will qualify only as an observation.

For purposes of conducting supervised mediations, mediation is defined as a complete case, which may consist of multiple sessions. The entire mediation shall be co-mediated or observed by a certified mediator of the type for which certification is sought. In the event the trainee is only able to participate in a single session of a multi-session mediation, such participation qualifies as an observation regardless of the trainee's level of participation. An appellate or pre-suit mediation may be utilized for the requirements to conduct mediations under supervision and observation if (1) it is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and (2) it is conducted by a certified mediator of the type for which certification is sought. A federal court mediation conducted by a certified circuit court mediator may be utilized to fulfill a circuit court mentorship. Administrative agency mediation

conducted under rules and procedures other than those of the state trial courts may not be utilized to fulfill the mentorship requirements.

**Miscellaneous Points.** Any applicant requesting certification points on the basis of licensure in a profession shall provide all applicable information necessary for the Center to verify such licensure.

Any applicant requesting certification on the basis of specific experience shall provide a resume detailing the experience and any other information necessary for the Center to verify such experience.

#### **Fees**

Fees in effect prior to the adoption of this order shall be accepted for all certification and renewal applicants for six months after the adoption of this order. Thereafter, the application, certification, and renewal fees shall be as follows:

Application Fee	\$20.00 (nonrefundable)
Certification and Renewal Fees	
County	\$40.00 <sup>1</sup>
Family	\$150.00
Circuit	\$150.00
Dependency	\$100.00
Appellate	\$100.00

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1. County fees (\$40) are not reduced and must be added to any of the combination fees.

Family/Circuit	\$275.00 (filed simultaneously)
Family/Dependency	\$225.00 (filed simultaneously)
Circuit/Dependency	\$225.00 (filed simultaneously)
Family/Appellate	\$225.00 (filed simultaneously)
Circuit/Appellate	\$225.00 (filed simultaneously)
Dependency/Appellate	\$225.00 (filed simultaneously)
Family/Dependency/Circuit	\$375.00 (filed simultaneously)
Family/Circuit/Appellate	\$375.00 (filed simultaneously)
Family/Dependency/Appellate	\$325.00 (filed simultaneously)
Circuit/Dependency/Appellate	\$325.00 (filed simultaneously)
Family/Dependency/Circuit/Appellate	\$450.00 (filed simultaneously)

The \$20 application fee is nonrefundable. Certification and renewal fees shall be returned to applicants who, upon review of their applications, are deemed ineligible to be certified. Applicants who are denied certification may reapply upon compliance with the qualifications for certification.

Applicants who meet the requirements for mediator certification shall be certified for a two-year period and shall be provided with a certificate from the Supreme Court of Florida evidencing such certification.

#### **Review Process**

An applicant who disagrees with a finding of ineligibility may object in writing within 30 days of the initial determination of ineligibility as indicated in a certificate of mailing. Any such response shall be reviewed by a three-person subcommittee of the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy appointed to review such matters, which shall make a

recommendation to the full Supreme Court Committee on Alternative Dispute Resolution Rules and Policy. The decision of the full committee shall be final.

## **II. Certification Renewal**

### **A. Application for Renewal**

Mediators seeking continued certification shall be required to file an application for renewal and a completed Continuing Mediator Education Reporting Form accompanied by renewal payment fees. Mediators seeking renewal of appellate mediator certification shall also be required to maintain no less than one of their previous certifications in family, dependency, or circuit mediation.

Any material misrepresentation by a mediator in the renewal process shall be automatically referred to the Mediator Qualifications Board.

### **B. Continuing Mediator Education**

The purpose of Continuing Mediator Education (hereinafter "CME") shall be to enhance the participant's professional competence as a mediator. The requirement for CME and the reporting thereof shall apply to all certified mediators seeking renewal and shall be fulfilled in accordance with the following procedures.

## **General Requirement**

To qualify as CME, a course or activity shall have significant, current intellectual or practical content and shall constitute an organized program of learning directly related to the practice of mediation. CME shall be conducted by an individual or group qualified by practical or academic experience.

All certified mediators must complete a minimum of:

1. Generally: Sixteen (16) hours of CME, which shall include a minimum of four hours of mediator ethics, a minimum of two hours of domestic violence education, and a minimum of one hour of diversity/cultural awareness education in each two year renewal cycle, inclusive of the two years following initial certification.
2. Family and Dependency: Family and dependency mediators must complete an additional two hours of the required 16 hours in domestic violence education per each renewal cycle, for a total of four hours.
3. Appellate: Appellate mediators must complete no less than four hours of appellate-specific mediation education. This may be part of or in addition to the required 16 hours per each renewal cycle of the underlying certification.

Mediators who are certified in more than one area must complete 16 hours of CME applicable to each of their areas of certification. Hours completed may be

utilized toward more than one area of certification if the subject matter is relevant to each field of certification. For example, courses on such topics as mediator ethics, domestic violence, and general mediation skills may be credited to any or all of the areas of certification.

At a minimum, 50 percent of the required CME hours must be satisfied by attendance, not as a lecturer or presenter, at a live lecture, live seminar, or an audio/video playback of a seminar attended by a group that discussed the materials presented. Interactive Internet presentations may be counted as attendance at a live lecture. Non-interactive Internet presentations shall be applied toward the audio-visual category. A maximum of four hours of CME may be earned through mentoring as defined above. Mentoring activities cannot be applied toward the required ethics, diversity/cultural awareness, or domestic violence CME components.

Continuing education completed for another profession's continuing education requirement may be used as CME if the material bears directly on the mediator's mediation practice and complies with the CME guidelines set forth in this order.

Mediator certification shall not be renewed until all CME requirements are completed.

### **Definition**

A CME hour is defined as 50 minutes. CME may be completed during the mediator's renewal cycle in any of the following formats:

- a) attending a live lecture or seminar;
- b) listening to or viewing an audio or video presentation of a lecture or seminar with a group, and participating in a discussion of the materials presented;
- c) listening to or viewing audio or video presentations;
- d) serving as a mentor pursuant to rule 10.100, Florida Rules for Certified and Court-Appointed Mediators;
- e) participating in Internet presentations;
- f) lecturing or teaching CME courses;
- g) authoring or editing written materials submitted for publication that have significant intellectual or practical content directly related to the practice of mediation; and
- h) successfully completing a self-directed program that is qualified for continuing education credit by a governmental licensing board.

### **Reporting Requirements**

Mediators must maintain proof of attendance at CME programs or other appropriate documentation and must report their CME at the end of each two-year

renewal cycle on the Center's renewal form. The mediator shall be responsible for maintaining all records relating to CME, which records shall be subject to audit. In addition, the mediator must certify that he or she has read the current Florida mediation rules; Chapter 44, Florida Statutes; and other relevant statutes.

Any CME hours completed may be utilized for only one renewal cycle. Hours in excess of the minimum requirement shall not be carried forward to the next renewal cycle.

Attending and lecturing or teaching at the same CME presentation will not entitle a mediator to additional credit. This prohibition against repeat attendance shall not apply to annual conferences and yearly updates.

If all other qualifications for renewal are satisfied and all fees paid or waived, but a mediator is deficient in CME credits, the mediator shall be notified in writing and certification shall be continued for 90 days from the notice of noncompliance. During those 90 days, the mediator shall complete all remaining CME requirements in order to be eligible for renewal.

#### **Review Process**

A mediator who disagrees with a finding of deficiency may object in writing within 30 days of the initial determination of deficiency as indicated in a certificate of mailing. Any such response shall be reviewed by a three-person subcommittee of the Supreme Court Committee on Alternative Dispute Resolution Rules and

Policy appointed to review such matters, which shall make a recommendation to the full Supreme Court Committee on Alternative Dispute Resolution Rules and Policy. The decision of the full committee shall be final.

### **C. Fees**

Renewal fees shall be at the same levels as for initial certification. All mediators seeking renewal shall be responsible for these fees. However, for renewals that are filed timely, the \$40 county mediator renewal fee will be waived upon written confirmation from the ADR Program Director (or designee) that the mediator served as a volunteer in the county court mediation program a minimum of six times during the prior certification period.

Mediators whose certification has lapsed may renew certification up to 180 days from the lapse date upon payment of a late fee in an amount equal to the mediator's renewal fee. Mediators who apply for renewal within 365 days after the lapse date will be required to pay a late fee equal to five times the mediator's renewal fee, up to a maximum of \$750. Mediators who apply for certification after day 365 will be required to meet the requirements for certification as a new mediator, including satisfactory completion of a certified mediation training program and fulfillment of the mentorship requirements. For purposes of this paragraph, the lapse date reverts to the initial renewal date, notwithstanding any extensions.

A mediator may request from the Center an extension of the renewal requirements and a waiver of any penalties for an extraordinary hardship. If such request is denied, a request for review may be taken to the three-person subcommittee of the Alternative Dispute Resolution Rules and Policy Committee appointed to review such matters, which shall make a recommendation to the full Alternative Dispute Resolution Rules and Policy Committee. The decision of the full committee shall be final.

### **III. Administrative Responsibility**

Administrative responsibility for implementation of the provisions of Chapter 44, Florida Statutes; rules 10.100, 10.105 and 10.110, Florida Rules for Certified and Court-Appointed Mediators; and this administrative order shall be with the Dispute Resolution Center of the Office of the State Courts Administrator.

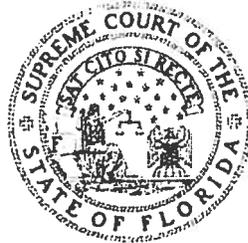
All certification, application, renewal, and late fees shall be deposited in the Supreme Court's Mediation and Arbitration Trust Fund to be used to provide support for implementing the applicable statutes, rules, and the provisions of this administrative order.

DONE AND ORDERED at Tallahassee, Florida, on January 10, 2011.

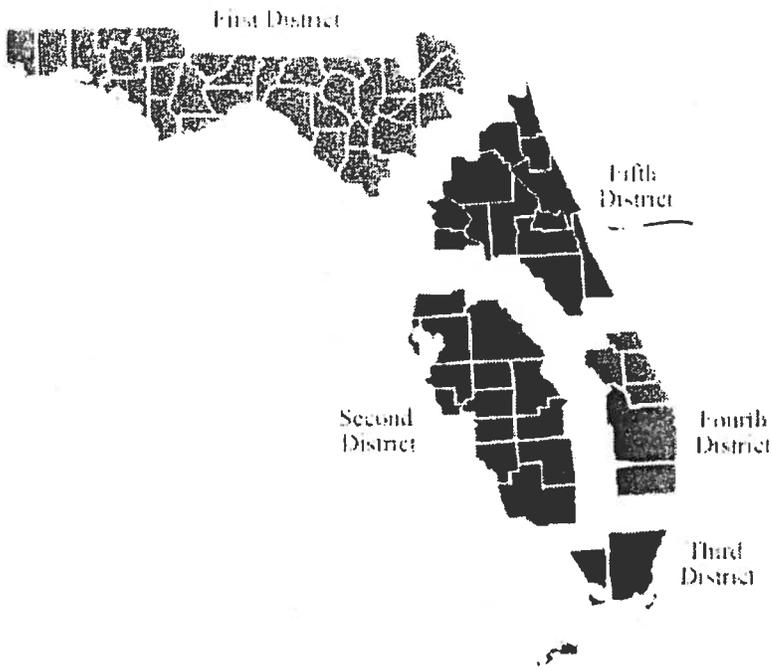
*Char. T. Canady*  
Chief Justice Charles T. Canady

ATTEST:

*Thomas D. Hall*  
Thomas D. Hall, Clerk of Court



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Select Year: 2010 · 

## The 2010 Florida Statutes

Title V Chapter 44 View Entire Chapter  
JUDICIAL BRANCH MEDIATION ALTERNATIVES TO JUDICIAL ACTION

### ~~44.102 Court-ordered mediation.—~~

(1) Court-ordered mediation shall be conducted according to rules of practice and procedure adopted by the Supreme Court.

(2) A court, under rules adopted by the Supreme Court:

(a) Must, upon request of one party, refer to mediation any filed civil action for monetary damages, provided the requesting party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties, unless:

1. The action is a landlord and tenant dispute that does not include a claim for personal injury.
2. The action is filed for the purpose of collecting a debt.
3. The action is a claim of medical malpractice.
4. The action is governed by the Florida Small Claims Rules.
5. The court determines that the action is proper for referral to nonbinding arbitration under this chapter.

6. The parties have agreed to binding arbitration.

7. The parties have agreed to an expedited trial pursuant to s. 45.075.

8. The parties have agreed to voluntary trial resolution pursuant to s. 44.104.

(b) May refer to mediation all or any part of a filed civil action for which mediation is not required under this section.

(c) In circuits in which a family mediation program has been established and upon a court finding of a dispute, shall refer to mediation all or part of custody, visitation, or other parental responsibility issues as defined in s. 61.13. Upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process.

(d) In circuits in which a dependency or in need of services mediation program has been established, may refer to mediation all or any portion of a matter relating to dependency or to a child in need of services or a family in need of services.

(3) All written communications in a mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of chapter 119.

(4) The chief judge of each judicial circuit shall maintain a list of mediators who have been certified by the Supreme Court and who have registered for appointment in that circuit.

(a) Whenever possible, qualified individuals who have volunteered their time to serve as mediators shall be appointed. If a mediation program is funded pursuant to s. 44.108, volunteer mediators shall be entitled to reimbursement pursuant to s. 112.061 for all actual expenses necessitated by service as a mediator.

(b) Nonvolunteer mediators shall be compensated according to rules adopted by the Supreme Court. If a mediation program is funded pursuant to s. 44.108, a mediator may be compensated by the county, or by the parties.

(5)(a) When an action is referred to mediation by court order, the time periods for responding to an offer of settlement pursuant to s. 45.061, or to an offer or demand for judgment pursuant to s. 768.79, respectively, shall be tolled until:

1. An impasse has been declared by the mediator; or
2. The mediator has reported to the court that no agreement was reached.

(b) Sections 45.061 and 768.79 notwithstanding, an offer of settlement or an offer or demand for judgment may be made at any time after an impasse has been declared by the mediator, or the mediator has reported that no agreement was reached. An offer is deemed rejected as of commencement of trial.

*History.*—s. 2, ch. 87-173; s. 2, ch. 89-31; s. 2, ch. 90-188; s. 2, ch. 93-161; s. 10, ch. 94-134; s. 10, ch. 94-135; s. 44, ch. 94-164; s. 18, ch. 96-406; s. 2, ch. 97-155; s. 2, ch. 99-225; s. 2, ch. 2002-65; s. 1, ch. 2004-291; s. 31, ch. 2005-236.

*Note.*—Former s. 44.302.

Select Year: 2010 ·

## The 2010 Florida Statutes

<a href="#">Title V</a>	<a href="#">Chapter 44</a>	<a href="#">View Entire Chapter</a>
JUDICIAL BRANCH    MEDIATION ALTERNATIVES TO JUDICIAL ACTION		

~~44.404~~ **Mediation; duration.**

- (1) A court-ordered mediation begins when an order is issued by the court and ends when:
  - (a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;
  - (b) The mediator declares an impasse by reporting to the court or the parties the lack of an agreement;
  - (c) The mediation is terminated by court order, court rule, or applicable law; or
  - (d) The mediation is terminated, after party compliance with the court order to appear at mediation, by:
    - 1. Agreement of the parties; or
    - 2. One party giving written notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.
- (2) In all other mediations, the mediation begins when the parties agree to mediate or as required by agency rule, agency order, or statute, whichever occurs earlier, and ends when:
  - (a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;
  - (b) The mediator declares an impasse to the parties;
  - (c) The mediation is terminated by court order, court rule, or applicable law; or
  - (d) The mediation is terminated by:
    - 1. Agreement of the parties; or
    - 2. One party giving notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

History.—s. 4, ch. 2004-291.

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**Appellant(s) Attorney (Lead Counsel):**

(Name)  
(Address)  
(City/State/Zip)

(Telephone)  
(Fax)  
(E-Mail)  
(Florida Bar No.)

**Appellee(s) Attorney (Lead Counsel):**

(Name)  
(Address)  
(City/State/Zip)

(Telephone)  
(Fax)  
(E-Mail)  
(Florida Bar No.)

---

**NATURE OF THE CASE**

- |  |  |
|--|--|
| <input type="checkbox"/> Business Tort           | <input type="checkbox"/> Contract                                |
| <input type="checkbox"/> Employment              | <input type="checkbox"/> Family matter (with children issues)    |
| <input type="checkbox"/> Insurance               | <input type="checkbox"/> Family matter (without children issues) |
| <input type="checkbox"/> Real Estate             | <input type="checkbox"/> Personal injury/wrongful death          |
| <input type="checkbox"/> Other (please describe) |  |

**ISSUES ON APPEAL** (To be completed by Appellants/Cross-Appellants only):  
Describe each expected issue on appeal as now known and the standard of review which will be applicable to each issue (completion of the questionnaire will not limit issues which may be raised in the briefs).

**MEDIATION**

- Was the case mediated at the trial level?  Yes  No
- Has the case been mediated since entry of the order appealed?  Yes  No

**- NOTICE -**

**You are hereby given an extension to file your directions to the clerk and court reporter, upon your receipt of this form.** If appellate mediation is ordered in this case, you will be given an automatic extension of the deadlines for preparation of the transcript, preparation of the record and filing of briefs, **said time to run from the date of the notification from the Court that mediation is ordered until 10 days after mediation has concluded.** [Mediation session has concluded with either an impasse or full or partial settlement]. The court will send an Order Declining Referral To Mediation if mediation is not ordered in this case.

(It is the intention of the Court that the mediation process will not substantially slow down the appellate process. However, the above extensions will give the parties the opportunity to save the costs of the record and brief preparation, if mediation is successful. Accordingly, additional extensions of deadlines pending mediation will normally not be granted absent stipulation of the parties and court order).

Date:

Lead  
Counsel:

For: Appellant(s)

(Counsel's Certificate of Service that complies with Florida Rule of Appellate Procedure 9.420(d)(1) must be attached to this Questionnaire)

**CERTIFICATE OF SERVICE**

Survey Response

**Hawaii**

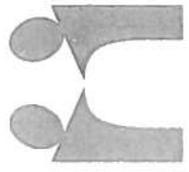
## HOW TO PREPARE FOR MEDIATION

There are basic requirements for an effective mediation process. Attorneys/Parties should

- Read all correspondence from the court about the Program requirements.
- Review Rule 3.1(e) of the Hawai'i Rules of Appellate Procedure regarding the stay of preparation of the record on appeal.
- Review the Program Rules, being sure to note the discretion delegated to the mediator (Rule 6) and the Center (Rule 10) to ensure an efficient and fair process.
- Bring relevant documents.

Court rules are online at:

[www.state.hi.us/jud/cirules](http://www.state.hi.us/jud/cirules)



# Hawai'i Appellate Mediation Program Solutions Satisfaction Success

*Mediation. It Works!*



Prepared by:

The Center for Alternative Dispute Resolution  
Hawai'i State Judiciary  
417 S. King Street, Room 207  
Honolulu, Hawai'i 96813  
Phone: (808) 539-4ADR (4237)  
Fax: (808) 539-4416

Visit the Center's Homepage for other publications and information: [www.courts.state.hi.us/cadr](http://www.courts.state.hi.us/cadr)

## THE MEDIATORS

The appointed mediators generously volunteer their time. The mediators are retired judges or justices, and retired or semi-retired counsel. Parties may agree on a private mediator. They are then jointly responsible for the mediator's fees. Private mediators must also follow the Program rules.

## BEFORE THE FIRST MEETING

Parties are required to submit an information packet and interest statement to the mediator, usually two weeks before they meet. These requirements are specified in the initial notice the parties receive from the Center.

## AT THE FIRST MEETING

The mediator generally:

- Meets with everyone to explain the goals and asks the parties to agree on ground rules, including privacy about what is said in mediation;
- Explains the private nature of mediation and the prohibition against informing the court about the content of the mediation;
- Asks parties for a brief summary of the dispute, issues on appeal, and settlement history;
- Works with the parties in private sessions to understand each side's legal and settlement positions and to help assist the benefits, risks, and costs of various options;
- Initiates and conducts negotiations;
- Files an order informing the court whether the case settled.

## BACKGROUND

The Judiciary's mediation program for appeals in civil cases began in 1995. The Center for Alternative Dispute Resolution (Center) administers the Hawai'i Appellate Mediation Program (Program). The main objective of the Program is to provide an alternative to litigation on appeal.

## INCLUSION IN THE PROGRAM

Most civil cases on appeal are eligible for the Program. A Notice of Mandatory Mediation is sent to parties whose cases are selected for mediation. If a case is not selected, a party may request voluntary participation.

## MEDIATION

Mediation is an informal, private process to help parties discuss, define, and resolve their dispute. The parties control the result of their mediation using a mediator-impartial person-to guide the process. The mediator does not make decisions for the parties.

## ADVANTAGES OF MEDIATION

- **MORE CONTROL OVER THE OUTCOME.** Mediation steps away from the win/lose model of litigation, allows for a wider discussion of the issues, and searches for solutions that everyone can accept.
- **PRIVATE.** Mediation is private. Program rules prohibit the mediator or the parties from communicating with the court regarding the mediation. See Rule 8 of the Program Rules for details.
- **INFORMAL.** The Rules of Evidence and other requirements of a court proceeding do not apply.
- **FASTER.** Usually mediation is scheduled much sooner than a decision is reached on appeal.
- **MAINTAINS RELATIONSHIPS.** Parties may need to have regular contact after their dispute is resolved (family and business matters, for example). A mediated agreement may include ways to deal with one another to avoid future disputes.

## STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established? *The Hawaii Appellate Mediation Program (Program) was established in 1995.*
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? *Program Rules, Hawaii Appellate Mediation Program Rules (attached.)*
3. Are mediations ordered by the court or is mediation an optional service provided upon request? *Court ordered and option to "opt-in".*
4. When did the program begin conducting mediations? *1995*
5. How many civil appeals are administered by your court annually? *For the 2010-11 fiscal year, approximately 400 cases were pending and approximately 340 cases were filed with the Hawaii Appellate Courts for a total case load of approximately 740 cases.*
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process. *The Program Administrator reviews the filed Civil Appeals Docketing Statements and identifies cases that may be appropriate for mediation. Screening calls are then made to counsel or self-represented parties. In some cases, court record checks may be performed.*
7. How many cases were mediated in the most recent year? *Thirty two cases were in the program in 2011. Of those cases, twelve settled, two reached a partial settlement, ten were returned to the appellate docket, and nine were pending as of December 2011.*
8. How many cases settled in mediation in the most recent year?  
*Full settlements -12 Partial settlements - 2*
9. How does your program define a "partial settlement?" *Resolution of one or more of the issues.*
10. Does your program offer mediation in cases with self-represented parties? *Yes.* If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? *Approximately 10%.* Does your program employ different policies or screening in cases involving self-represented parties? *Case screening varies depending on the circumstances of each case. See answer to no. 6 above.*
11. Who serves as mediators in your program? *Our trained, volunteer mediators are retired or semi-retired attorneys and retired judges and justices.* How many of such mediators are currently active in your program? *Currently, we have 61 mediators on our panel.*

12. What are the required qualifications for appellate mediators in your program? *Potential volunteer mediators are invited to participate in the Program by the Chief Justice of the Hawaii Supreme Court. Thereafter, they are required to attend a training program.*
13. How are mediators selected or designated for a particular case? *The Program Administrator assigns mediators for particular cases based on their subject matter knowledge, style, and experience. We often utilize co-mediators. We frequently use male/female co-mediator teams.*
14. Are your cases mediated by one mediator or are they co-mediated? *Usually, co-mediated but some of our mediators prefer to serve alone.*
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services. *We ask our mediators to start with a facilitative approach. However, often parties/counsel ask the mediators to be evaluative.*
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program. *The Center for Alternative Dispute Resolution Director and Program Administrator work with the Chief Justice and an associate justice to look at the direction of the Program.*
17. What is the annual cost of the program? *Approximately 60% of a full time employee (FTE) is dedicated to the Program, plus about 5%-10% of two other FTEs.*
18. How many staff persons assist in the management and administration of your appellate mediation program? *The Program has one Program Administrator. The Center for Alternative Dispute Resolution, which houses the Program, has a director and secretary who help with the Program.* How many of such persons, if any, also serve as mediators in your program? *1*
19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? *No, participation is mandatory.* Please describe the grounds permitted to opt-out. *N/A*
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? *Yes.* If so, have such sanctions been imposed? *Yes.* Please describe. *Sanctions have been imposed for noncompliance with Program rules. They are rarely imposed.*
21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g., contract, domestic, tort)
  - 1) *Divorce*
  - 2) *Trusts*
  - 3) *Worker's Compensation*

4) *Contract*

21. If you are able to provide settlement statistics per case type, please do so.
22. What types of civil cases, if any, are ineligible for mediation in your program? *Petitions for extraordinary relief such as writs of mandamus; writs of habeas corpus; incarcerated persons seeking relief related to the incarceration; post-conviction proceedings; questions of law reserved for the Hawaii Supreme Court; appeals from drivers' license revocations; appeals from restraining orders; appeals from termination of parental rights; and appeals from adjudication of juveniles as law violators. See Hawaii Appellate Mediation Program Rules, Rule 2.*
23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? *Not significantly.* If so, please describe.
24. What do you rate as the most significant successes of your appellate mediation program to date? *Since the Program's inception in 1995, approximately 472 cases went through the Program, and of those cases, over 50% found resolution.*
25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country? *The biggest challenge is resources.*
26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources? *In the Program, approximately 244 cases were resolved.*
27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program. *The Program Rules and a Program brochure are attached.*
28. Has your program been evaluated? *No.* If so, could you share the results of the evaluation?

Mediation Program Name: *Hawaii Appellate Mediation Program*

Court: *Intermediate Court of Appeals*

Court Case Jurisdiction: *Court Rules (attached)*

Court Geographic Jurisdiction: *State of Hawaii*

Name of Mediation Program Director/Administrator: *Melissa Lewis, Program Administrator*

Address: *Hawaii State Judiciary, Center for Alternative Dispute Resolution, 417 South King Street, Room 207, Honolulu, Hawaii 96813*

Telephone: *(808)539-4237*

Email: *melissa.l.lewis@courts.hawaii.gov*

Website: *www.courts.state.hi.us/cadr*

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: *1.31.12*

*Melissa Lewis*  
Name

*Melissa Lewis*  
Signature

*Appellate Mediation Administrator*  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, *Mala.Ortiz@mdcourts.gov*, phone 410-260-3715, fax 410-260-1547.

**HAWAI‘I APPELLATE  
MEDIATION  
PROGRAM RULES**

**(SCRU-11-0000657)**

**Adopted and Promulgated by  
the Supreme Court  
of the State of Hawai‘i**

**March 1, 1995  
Effective March 15, 1995  
With Amendments as Noted**

*Comments and commentary are provided by the rules committee  
for interpretive assistance. The comments and commentary express  
the view of the committee and are not binding on the courts.*

**The Judiciary  
State of Hawai‘i**

# HAWAI'I APPELLATE MEDIATION PROGRAM RULES

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**HAWAI'I APPELLATE MEDIATION  
PROGRAM RULES**

**Rule 1. GOALS; SCOPE.**

The Hawai'i Appellate Mediation Program ("program") is established herewith pursuant to Rules 3.1 and 33 of the Hawai'i Rules of Appellate Procedure to provide an alternative means for resolving civil appeals. A goal of the program is to enhance public confidence in the court system. To the extent resources are available, this program will provide parties a forum and process to:

- (a) realistically consider the possibility of settlement of the entire case or issues in the case;
- (b) discuss limiting and simplifying the issues on appeal;
- (c) discuss briefing schedules, the content of the record, and other pertinent matters;
- (d) take actions that may reduce costs; and
- (e) aid the speedy and just resolution of the case.

**COMMENTARY:**

*The main objective of the program is to provide an alternative to litigation to parties who have filed an appeal. This objective is met by providing parties with a neutral place and process for resolving pending cases in total or, alternatively, issues within the case. Through this process, parties and the mediator explore various solutions to the issues. Cases that settle will be dismissed.*

*Early resolution of cases on appeal benefits both the settling parties and the court. Settling parties benefit through a private resolution of their cases without the need for further time-consuming and often expensive litigation in the appellate courts. Reducing the courts' case load allows the courts to resolve other cases more quickly and to decrease case processing time. The program also assists parties in simplifying, clarifying, and, when possible, reducing the issues raised on appeal. This promotes speedier resolution of those cases that remain before the court.*

*(As amended September 7, 2011, effective January 1, 2012.)*

**Rule 2. APPEALS TO BE INCLUDED IN OR EXCLUDED FROM THE PROGRAM.**

Except as provided in this rule, any civil appeal may be included in the program. Criminal appeals and civil proceedings in the nature of the following are excluded from the program:

- (a) petitions for extraordinary relief such as a petition for a writ of mandamus or the like;
- (b) petitions for a writ of habeas corpus;
- (c) appeals or petitions in which the appellant/petitioner is incarcerated and is seeking relief related to the incarceration;
- (d) appeals or cases arising under Rule 40 of the Hawai'i Rules of Penal Procedure;
- (e) questions of law reserved to the Supreme Court of Hawai'i;
- (f) appeals from revocation of drivers' licenses;
- (g) appeals from restraining orders;
- (h) appeals from termination of parental rights; and
- (i) appeals from adjudication of juveniles as law violators.

**COMMENTARY:**

*The program schedules mediation in as many civil appeals, not otherwise excluded, as staffing for the program permits.*

*Criminal cases, habeas corpus petitions, and cases brought by incarcerated persons complaining about their confinement, arrest, or trial are excluded from the program for 2 reasons: (1) the exposure of counsel to claims of ineffectiveness of counsel for their participation; and (2) the ineffectiveness of a settlement process in which the mediator would be unable to reduce sentences.*

*Similarly, petitions for extraordinary relief and questions of law reserved to the Supreme Court of Hawai'i are excluded because these types of cases may generally be resolved only by judicial decision. Also, in these types of cases it is often critical that the court enter its decision on an expedited basis.*

*(As amended and effective February 26, 1996; further amended November 17, 2000, effective January 1, 2001; further amended September 7, 2011, effective January 1, 2012.)*

**Rule 3. PARTICIPATION IN THE PROGRAM.**

(a) **Selection of Cases.** The program will include and schedule mediation for as many cases as possible.

(b) **Mandatory Participation.** Participation is mandatory for all cases included in the program.

(c) **Voluntary Participation.** If a case is not included in the program, parties may request that the case be included in the program, provided the request is made no later than 30 days after briefing is complete. In cases with more than 2 parties, mediation under this section need not include all parties in the case, but may be limited to those parties wishing to mediate issues between or among them that are within their authority to settle. The request must be made by letter directed to the program and filed with the appellate clerk. Requests will be accommodated when feasible.

(d) **Deadline for completion of mediation; extension of deadline.** An appeal included in the program shall be returned to the appeals docket 1 year after the notice of inclusion in the program is received, provided that the parties may file a joint motion for good cause for an order recommitting the appeal to the program.

**COMMENTARY:**

*Comparisons of mandatory and voluntary programs show that mandatory programs are generally more successful. The purpose of requiring participation (not settlement) in the program is to make the program benefits accessible to as many civil litigants and attorneys as possible.*

*Parties may "opt-in," that is, request their case be included in the program. Subject to staffing considerations, the program will make every effort to accommodate these requests. For opt-in cases, the program will include only those parties who wish to participate in matters in the case at issue between or among them. Therefore, in a multiple party case, not all parties or all issues need be included.*

*(As amended and effective February 26, 1996; further amended June 20, 2006, effective July 1, 2006; further amended September 7, 2011, effective January 1, 2012.)*

**Rule 4. CIVIL APPEAL DOCKETING STATEMENT; TIMING OF THE MEDIATION.**

(a) **Civil Appeal Docketing Statement; Response.** Concurrent with the filing of the notice of appeal or cross-appeal, each appellant or cross-appellant in each civil case not otherwise excluded from the program, see Rule 2 of these rules, shall file a Civil Appeal Docketing Statement (CADS) on the form provided by the court. Each appellant or cross-appellant shall attach to the CADS:

(1) a copy of the judgment or order appealed from;

(2) a copy of any written opinion or findings of fact and conclusions of law supporting the judgment or order; and

(3) proof of service on all other parties to the proceedings below.

Any other party may file a response to a CADS. The response must be filed within 7 days after service of the CADS.

(b) **Notice; Timing of Mediation.** If a case is scheduled for mediation, the appellate clerk will send a notice to the parties within 30 days after the CADS is filed. The program will schedule mediation as soon as possible after a case has been included in the program and will send the parties a Notice of Mandatory Mediation with information about program requirements.

(c) **Required Submittals to Mediation.** Attorneys and parties shall comply with the requirements in the Notice of Mandatory Mediation issued by the program. The mediator may request additional information and documents from attorneys and parties and may extend deadlines for those submittals.

**COMMENTARY:**

*The CADS form is included in the Appendix to the Hawai'i Rules of Appellate Procedure. Appellants in civil cases that fall within this program, see Rule 2 of these rules, must file the CADS when they file their Notice of Appeal.*

*An appellee may file a response to the CADS within 7 days after service.*

*Copies of the CADS and any response thereto must be served on all parties to the proceedings below. Failure to comply with*

*these requirements may result in dismissal of the appeal.*

*If a case is accepted into the program, counsel and parties will be notified. The notice will be sent within 30 days after the CADS is filed. A scheduling order will notify counsel and parties listed on the Court's docket of the date, time, and place of the mediation.*

*(As amended and effective February 26, 1996; further amended September 7, 2011, effective January 1, 2012.)*

#### **Rule 5. THE MEDIATOR.**

**(a) Authorization to serve as volunteer mediator.** The supreme court may authorize retired justices and judges and retired or semi-retired attorneys to serve as mediators. Authorized mediators shall work as volunteers and shall serve at the pleasure of the supreme court. When necessary, the administrator of the program and the Director of the Center for Alternative Dispute Resolution may serve as mediators.

**(b) Assignment by program.** Except as provided by section (c), the program administrator or the administrator's designee shall assign a volunteer mediator to each case selected for appellate mediation. The parties will not be charged for the services of mediators assigned by the program.

**(c) Selection by parties.** The parties may jointly select any person to serve as a mediator, including a person who is not appointed as a volunteer mediator under section (a). If the parties select the mediator, the parties are responsible for any fees charged by the mediator and all costs incurred.

**(d) Application of Program Rules.** Without regard to the manner assigned or selected, the mediator shall operate under the program rules.

#### **COMMENTARY:**

*Hawai'i is fortunate to have an invaluable resource in the form of highly respected retired justices and judges, and semi-retired and retired counsel. These persons make a tremendous contribution to the program, and with their work the program continues to build a solid*

*reputation and is successful. Therefore, the program relies on these volunteers to serve as court-appointed mediators. To avoid any potential conflicts of interest, all court-appointed mediators will be either retired or semi-retired. Additionally, they shall have received training in mediation and alternative dispute resolution techniques. When necessary, and with the prior consent of the parties, the administrator of the program and the Director of the Center for ADR may be appointed by the program to serve as mediators.*

*The parties have the option of jointly selecting their own mediator. Whereas all court-appointed mediators are either attorneys or judges, under this option the parties may select anyone upon whom they jointly agree. When the parties choose the mediator, they are responsible for paying the mediator for his/her services. The mediator selected shall follow the program rules.*

*(As amended and effective February 26, 1996; further amended September 7, 2011, effective January 1, 2012.)*

**Rule 6. THE MEDIATOR'S ROLE AND AUTHORITY.**

The mediator's role is to facilitate communication and negotiation between parties to reach a voluntary agreement to settle their case. If the parties do not resolve all issues, the mediator may help them simplify, clarify, and reduce the issues on appeal. The mediator may withdraw the case from the program before mediation begins, or terminate mediation if the mediator decides that the process is unproductive or inappropriate.

**COMMENTARY:**

*Mediators generally use a consensus-building style of mediation in conducting appellate mediations for the court. Usually, the mediator begins the process by explaining the goals of mediation, the role of the mediator, the mechanics of the process (including the possibility of private sessions with parties), and the confidentiality of the process. The mediator may remind the participants that although the mediator guides the process, the parties retain control over the result.*

*Following the introductory remarks, the mediator usually asks each party to provide background on the dispute, to discuss briefly the issues on appeal, and to recount the settlement history. The purpose of the initial joint session is to build rapport with the participants, to familiarize the parties with the process, and to provide the mediator with relevant information. Discussions proceed in joint session until the mediator finds it appropriate to begin private sessions. In private sessions, the mediator may work with the parties to develop a non-partisan evaluation of the merits of each side's legal and settlement positions, and an assessment of the potential benefits, risks, and costs of various options.*

*Generally, the mediator then initiates negotiations, often alternating individual sessions with the parties. The mediation process is flexible and, in certain situations, parties may not meet in joint sessions. The process continues until either a settlement or an impasse is reached.*

*Rule 3.1(e) of the Hawai'i Rules of Appellate Procedure stays preparation of the record, effectively staying preparation of briefs. However, when parties opt-in to the program while briefing is incomplete, transcripts are unfinished, or even after briefing is complete, the parties may choose either that: (1) all deadlines be postponed, or (2) the appeal proceed on the appellate and program tracts simultaneously.*

*When the mediator concludes that the process is complete, the program enters an order with the appellate clerk that either returns the case to the appellate docket or states that a tentative settlement has been reached. The parties have 30 days to file the appropriate documentation with the court; otherwise, the case will be returned to the appellate docket.*

*The program's involvement in the case terminates when the Mediator's Report is filed. The program may resume jurisdiction over the case upon a joint request by the parties.*

*To ensure that time spent in mediation is productive, the mediator may end the mediation if the mediator decides that the process is unproductive or inappropriate.*

*(As amended and effective February 26, 1996; further amended September 7, 2011, effective January 1, 2012.)*

**Rule 7. ATTENDANCE AT MEDIATION.**

Counsel with the most direct relationship to the client for the purpose of settlement shall attend all mediation sessions. Clients and parties are required to appear in person and shall have settlement authority. The mediator may request that third persons attend the mediation sessions. Upon written request by counsel or a party, the mediator may waive the requirement of having clients or parties physically present at the mediation sessions.

**COMMENTARY:**

*All counsel and parties intending to file briefs in the appeal shall attend all mediation sessions unless excused by the mediator. If more than one attorney*

*represents a party, the attorney with the most direct relationship with the client for the purpose of settlement discussions must attend. The attorney will be expected to be familiar with all aspects of the case. Co-counsel and other attorneys in the principal counsel's firm may attend if their presence would be beneficial.*

*The program requires that a client or client's representative attending the mediation have settlement authority. This insures that the process will not be delayed when important decisions are to be made.*

*At the conclusion of a mediation session, the mediator may schedule further mediation for another time and date if the mediator believes this would be beneficial. If the mediator believes it would be helpful to have third persons present at mediation, the mediator may request that they attend mediation.*

*In the event the mediator allows telephone or video conferencing, the costs shall be borne by the party or parties making the request.*

*(Amended September 7, 2011, effective January 1, 2012.)*

**COMMENTARY:**

*To encourage full and frank discussion, all communications and matters discussed at mediation and in subsequent discussions are kept confidential and are not to be communicated to the court. This includes the view of the mediator as to the merits of the case pending before the court. Therefore, matters discussed at mediation are confidential.*

*For example, the parties may not refer to or quote any statements made during the course of the mediation in briefs or at oral argument.*

*If all parties to the appeal consent, the trial judge who presided over the case may communicate with the mediator about matters concerning the case that may be relevant to the mediation. Such communications could be helpful and timesaving to the mediator. If there is a communication between the trial court and the mediator, and if the case is later remanded to the trial court, the trial judge assigned to the case shall not be the judge who communicated with the mediator.*

*(Amended September 7, 2011, effective January 1, 2012.)*

**Rule 8. CONFIDENTIALITY.**

**(a) Communication Between the Court and the Mediator or the Parties Prohibited.** The mediator or any court official who becomes involved in settlement discussions as part of the program shall not communicate any matters discussed at the mediation to any court. Similarly, parties are prohibited from advising members of the court of discussions or actions taken at mediation.

**(b) Communication by the Trial Court Judge to the Mediator.** The trial judge and the mediator may communicate about matters related to the mediation, provided all parties consent to the communication before any communication begins. If the mediation does not result in a settlement and the case is remanded to the trial court by the appellate court for further proceedings, the case shall be remanded to a trial judge other than the judge who communicated with the mediator.

**Rule 9. IMMUNITY.**

Mediators selected in accordance with Rule 5 of these program rules shall be absolutely immune from suit for all conduct in the course of their official duties.

*(Amended March 8, 1995, effective March 15, 1995; further amended September 7, 2011, effective January 1, 2012.)*

*(As added, effective February 26, 1996; amended effective July 1, 1999; further amended May 5, 2000, effective July 1, 2000; further amended September 7, 2011, effective January 1, 2012.)*

**Rule 10. SANCTIONS.**

**(a) Authorization.** The program administrator or the Director of the Center for ADR may impose sanctions upon any party or attorney for a party for noncompliance with these rules or the Hawai'i Rules of Appellate Procedure, or who unduly interferes with the orderly procedures of the program.

**(b) Procedure.** To impose sanctions the program administrator or the Director of the Center for ADR shall first issue an order to show cause (order) as to why a sanction should not be imposed. The order shall be filed in the record and shall state the act or omission for which sanctions may be imposed, require a response not later than 10 days after entry of the order, and note that failure to respond or to show good cause will result in imposition of a sanction.

**(c) Review.** The sanction order shall be filed in the record and shall be subject to review by the appellate courts pursuant to Rule 40 of the Hawai'i Rules of Appellate Procedure.

**COMMENTARY:**

*Noncompliance with program rules and requirements hampers the effectiveness of the program and the mediator's ability to meet program objectives. Counsel and parties are subject to sanctions for noncompliance unless good cause is shown. Examples of noncompliance with program rules for which sanctions may be imposed include but are not limited to: (1) failure to submit a pre-mediation statement as required by the program; (2) submission of an incomplete pre-mediation statement; and (3) failure of a party, attorney, or person authorized to settle the case to attend mediation without advance approval by the mediator, the program administrator, or the Director of the Center for ADR.*

# Survey Response: Kentucky

## STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established?  
1985
2. What formal method, if any, was used to establish the program (eg., rule, administrative order, other)?  
Civil Rules
3. Are mediations ordered by the court or is mediation an optional service provided upon request?  
Court Ordered
4. When did the program begin conducting mediations?  
1986
5. How many civil appeals are administered by your court annually?  
1400 +
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.  
Prehearing conference attorneys select which cases they will mediate. Appellate attorneys may indicate whether they want a conference.
7. How many cases are mediated annually?  
400
8. How many cases settle in mediation annually?  
Full settlements 38%-40%                      Partial settlements N/A
9. How does your program define a partial settlement?  
N/A
10. Does your program offer mediation in cases with self-represented parties?  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?  
No
11. Who serves as mediators in your program? How many of such mediators are currently active in your program?  
Two "Prehearing Conference Attorneys" who are employed by the Court as full-time mediators.

12. What are the required qualifications for appellate mediators in your program?

Prehearing Conference Attorneys hired by the Chief Judge.

13. How are mediators selected or designated for a particular case?

Prehearing Conference Attorneys screen civil appeals which they will mediate.

14. Are your cases mediated by one mediator or are they co-mediated?

One

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

Primarily, neutral case evaluation.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

Two Prehearing Conference Attorneys report directly to the Chief Judge.

17. What is the annual cost of the program?

Salaries for two Prehearing Conference Attorneys and one secretary.

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?

Two prehearing conference attorneys and one secretary.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.

Formally, no.

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons arising from the mediation process? If so, have such sanctions been imposed? Please describe.

Yes, by civil rule. Attorney fees for opposing counsel.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

Domestic                    35%

Tort                            30%

Contract                    20%

Real Property            10%

Administrative Law      5%

22. If you are able to provide settlement statistics per case type, please do so. N/A

23. What types of civil cases, if any, are ineligible for mediation in your program?

Prisoner confinement, worker's compensation.

24. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

No

25. What do you rate as the most significant successes of your appellate mediation program to date?

Reduction of case load for judges. Once cases are settled there are no motions for discretionary review in Supreme Court nor remand to Trial Court.

26. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

Timeliness of conferences without delaying appellate process.

27. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

See 24.

28. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

29. Has your program been evaluated? If so, could you share the results of the evaluation?

No

Mediation Program Name: Prehearing Conference Program  
Court: Kentucky Court of Appeals  
Court Case Jurisdiction: All civil appeals and criminal (under 20 years) appeals from Circuit Courts.

Court Geographic Jurisdiction: Kentucky

Name of Mediation Program Direction/ Administrator: Philip B. Swain

Address: 360 Democrat Drive

Frankfort, KY 40601

Telephone: 502-573-7920

Email:

phils@kycourts.net

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Court of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, Mala.Ortiz@mdcourts.gov, phone 410-260-3715, fax 410-260-1547.

Permission granted to use survey responses, by email  
7/6/12 from Phil Swain to Maryland Court of Special  
Appeals, office of mediation

following a remand should be brought up for appellate review by an appeal from that order. *Gaston v. Commonwealth*, 545 S.W.2d 941, 1977 Ky. LEXIS 392 (Ky. 1977) (decided under prior rule).

## 2. Original Appeal.

### 3. — Failure to Resolve Questions.

If the appellate court fails to resolve some of the questions raised on the original appeal, they need not be rebriefed and will not be considered as waived. *Gaston v. Commonwealth*, 545 S.W.2d 941, 1977 Ky. LEXIS 392 (Ky. 1977) (decided under prior rule).

### 4. Second Appeal.

In perfecting a second appeal after an appellate opinion has failed to resolve one or more claims of error raised on the original appeal, appellant in a criminal case shall not be required to comply with provisions of this section regarding the perfecting of appeals. *Gaston v. Commonwealth*, 545 S.W.2d 941, 1977 Ky. LEXIS 392 (Ky. 1977) (decided under prior rule).

**Research References.** Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 5th Ed., Practice Context for Appeals from Kentucky District Courts to Circuit Court, § 100.00.

## Rule 76.03. Prehearing conference.

(1) This Rule, 76.03, applies to all civil actions appealed to the Court of Appeals, except prisoner applications seeking relief relating to confinement or conditions of confinement and appeals from Circuit Court orders determining paternity, dependency, abuse, neglect, domestic violence, or juvenile status offense.

(2) Upon the filing of a notice of appeal to the Court of Appeals in a civil case to which this rule applies, the clerk of the circuit court shall forthwith transmit a copy of the notice of appeal to the Clerk of the Court of Appeals, together with copies of (a) the docket sheet of the court from which the appeal is taken; (b) the judgment or order sought to be reviewed; and (c) any opinion or findings of the circuit court or administrative agency.

(3) In any appeal to which this Rule, 76.03, applies, following the filing of the notice of appeal, the running of time for further steps shall not run until so ordered by the Court of Appeals except for the following: (a) the filing of a notice of cross-appeal under Rule 74.01; (b) the filing of a motion to transfer under Rule 74.02; or the filing of a prehearing statement under this Rule, 76.03. Unless otherwise ordered by the Court of Appeals, the full time for such further steps shall be computed from the date of entry of the order stating that no prehearing conference shall be held pursuant to this rule, or from the date of entry of the order reciting the actions taken and the agreements reached by the parties during a prehearing conference held pursuant to this rule.

(4) Within twenty days after filing the notice of appeal or notice of cross-appeal in the circuit court, each appellant and cross-appellant shall file with the Clerk of the Court of Appeals, with service on all other parties, a prehearing statement, on a form to be supplied by the clerk of the circuit court at the time the notice of appeal is filed, setting forth the following information:

- (a) The style of the case and circuit court docket number;
- (b) The name, mailing address, and telephone number of each attorney whose appearance is entered in the case, together with the name of the party represented by the attorney;
- (c) The name of the judge who presided over the matter being appealed;

(d) The date on which the notice of appeal and the date of which any notice of cross-appeal was filed;

(e) A statement as to whether the matter has been before the Court of Appeals, on a previous occasion, in which case the clerk shall, if necessary, obtain the old record from the clerk of the trial court, and shall place the old record with the new one;

(f) The type of litigation;

(g) A brief description of the claims, defenses, and issues litigated;

(h) A brief statement of the facts and issues proposed to be raised on appeal, including jurisdictional challenges;

(i) A statement, based on counsel's present knowledge, as to whether the appeal involves a question of first impression;

(j) A statement as to whether the determination of the appeal will turn on the interpretation or application of a particular case or statute and, if so, the name of the case or the number of the statute; and

(k) A statement, based upon counsel's present knowledge, as to whether there is pending before the Court of Appeals or the Supreme Court another case arising from substantially the same case or controversy or involving an issue which is substantially the same, similar or related to an issue in this appeal.

(5) In any civil case to which this rule applies in which the constitutionality of a statute is challenged by any party as an issue in the appeal, a copy of the prehearing statement shall be served upon the Attorney General. The Attorney General may file within 10 days of the filing of the prehearing statement an entry of appearance. If no entry of appearance is filed in such a case by the Attorney General, then no further filings or briefs shall be served on the Attorney General.

(6) Within ten days after the filing of appellant's or cross-appellant's prehearing statement each appellee or cross-appellee may file with the Clerk of the Court of Appeals, with service on all other parties, a supplemental statement containing any other information needed to clarify the issues on appeal and on cross-appeal, and a statement as to whether in the opinion of counsel, the appeal should be designated a special appeal pursuant to CR 76.05.

(7) All civil cases shall be reviewed to determine if a prehearing conference would be of assistance to the Court or the parties; and any party may move for a prehearing conference at the time of filing the prehearing statement or supplemental statement. Such a conference may be conducted by a judge of the Court of Appeals or a staff attorney of the Court known as a conference attorney.

(8) A party shall be limited on appeal to issues in the prehearing statement except that when good cause is shown the appellate court may permit additional issues to be submitted upon timely motion.

(9) A judge of the Court of Appeals designated by the Chief Judge of the Court of Appeals or a conference attorney designated by the Chief Judge of the Court of Appeals may direct the attorneys for all parties to attend a prehearing conference, in person or by telephone, to be held as soon as practicable after the filing of the prehearing statement.

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(10) The purpose of the conference shall be to consider the possibility of settlement, the simplification of issues, the contents of the record, the time for filing the record and briefs, and any other matters which the judge or conference attorney determines may aid in the handling or disposition of the proceedings.

(11) At the conclusion of the prehearing conference, the judge or conference attorney shall enter an order reciting the actions taken and the agreements reached by the parties and that order shall govern the subsequent course of the proceedings.

(12) The comments made during the prehearing conference are confidential, except to the extent disclosed by the prehearing order entered pursuant to CR 76.03(10), and shall not be disclosed by the conference judge or conference attorney nor by counsel in briefs or argument.

(13) In the event of default by any party in any action required by a prehearing conference order, the Clerk of the Court of Appeals shall issue a notice to the party in default providing a 10-day period within which to file an affidavit showing good cause for the default and including when the required action will be taken.

(14) Upon failure of a party or attorney to comply with the provisions of this rule or the provisions of the prehearing conference order, the Court of Appeals may assess reasonable expenses caused by the failure, including attorney's fees; assess all or a portion of the appellate costs; or dismiss the appeal.

(15) A judge who participates in a prehearing conference or becomes involved in settlement discussions pursuant to this rule shall not sit as a member of the panel assigned to hear the appeal.

(Adopted October 1, 1991, effective November 15, 1991; amended July 8, 1992, effective August 1, 1992; amended November 22, 1996, effective January 1, 1997; amended December 3, 1998, effective January 1, 1999; amended November 27, 2000, effective February 1, 2001; amended November 13, 2006, effective January 1, 2007.)

**Cited:** *Monticello Co. v. Natural Resources & Env'tl. Protection Cabinet*, 864 S.W.2d 921, 1993 Ky. App. LEXIS 65 (Ky. Ct. App. 1993); *Tetrick v. Frashure*, 119 S.W.3d 89, 2003 Ky. App. LEXIS 243 (Ky. Ct. App. 2003); *Thomas v. Grange Mut. Cas. Co.*, 2004 Ky. App. LEXIS 163 (Ky. Ct. App. 2004); *McAdam v. Ky. Bar Ass'n*, 262 S.W.3d 640, 2008 Ky. LEXIS 203 (Ky. 2008).

#### NOTES TO DECISIONS

##### ANALYSIS

1. Sanctions.
2. Application.
3. Prehearing Statement.

##### 1. Sanctions.

The sanctions provided for in subsection (12) of this rule are not to be used as a method of docket control, nor do they justify a hyper-technical reading of the statement of issues requirement in subdivision (3)(i) of this rule.

*Capital Holding Corp. v. Bailey*, 873 S.W.2d 187, 1994 Ky. LEXIS 35 (Ky. 1994).

##### 2. Application.

An informational hearing conducted by the three-judge panel is not controlled by former rule regarding prehearing conferences. *Grimes v. Nationwide Mut. Ins. Company/Nationwide Mut. Fire Ins. Co.*, 705 S.W.2d 926, 1985 Ky. App. LEXIS 629 (Ky. Ct. App. 1985) (decided under prior rule).



KENTUCKY COURT OF APPEALS  
CIVIL APPEAL PREHEARING STATEMENT

Internal Use Only

APPELLANT

VS. COURT OF APPEALS DOCKET NO. \_\_\_\_\_ (leave blank)

APPELLEE

Appeal From \_\_\_\_\_ Circuit Court Action No. \_\_\_\_\_

Trial Judge: \_\_\_\_\_ Judgment/Order Appealed From Entered: \_\_\_\_\_

Notice of Appeal Filed: \_\_\_\_\_ Notice of Cross Appeal Filed: \_\_\_\_\_

Identifying Information Regarding Counsel for APPELLANT:

Name of Client \_\_\_\_\_

In the trial court, this party was the  Plaintiff  Defendant  Other (specify) \_\_\_\_\_

Attorney's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No. \_\_\_\_\_

Identifying Information Regarding Counsel for APPELLEE:

Name of Client \_\_\_\_\_

In the trial court, this party was the  Plaintiff  Defendant  Other (specify) \_\_\_\_\_

Attorney's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No. \_\_\_\_\_

1. Has this case been before an Appellate Court previously?  Yes  No  
If Yes, provide date and prior case number(s) \_\_\_\_\_
2. Type of litigation (type of order; e.g., automobile negligence, breach of contract, domestic, product liability, property dispute, tax, UCC, zoning, etc.). **Attach copy of complaint or other document initiating Circuit Court action.**  
\_\_\_\_\_  
\_\_\_\_\_
3. Was this case mediated at the trial court level?  Yes  No

4. **Circuit Court Disposition** (type of order, e.g., Default or Summary Judgment, Dismissal, etc.). **Attach copy of final judgment and any separate written opinion by trial court.**

\_\_\_\_\_

5. **Relief:** (a) Damages: **Amount Sought \$** \_\_\_\_\_ **Amount Granted \$** \_\_\_\_\_  
(b) Injunction:  Granted  Denied  
(c) Other: \_\_\_\_\_

6. **Facts and Issues:** (Brief statement of facts, claims, defenses and issues litigated. Attach separate sheet if necessary).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. **Briefly state issues proposed to be raised on appeal**, including jurisdictional challenges, and any question of first impression. Attach separate sheet if necessary.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Will the appeal turn on interpretation or application of a **particular case or statute**?  Yes  No  
If Yes, identify case/statute: \_\_\_\_\_

9. Is there any known case involving **substantially the same issue now pending** before either appellate court of this state?  Yes  No If Yes, give Case Number: \_\_\_\_\_  
Case Name: \_\_\_\_\_

10. Would a prehearing conference be helpful?  Yes  No Why? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION**

I/We hereby certify a copy of the foregoing statement was executed and a copy served on:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 2\_\_\_\_\_. \_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

- NOTES:**
- 1) Items 2 and 4 on page 1 require documents to be attached to this Form for proper filing.
  - 2) Filing of Civil Notice of Appeal suspends running of time for further appeal steps-See CR 76.03(3).

# Survey Response: Maryland

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established?

February of 2010

2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?

There is a Court Rule that provides for the ordering of parties and/or counsel to a Pre-hearing Conference for purposes of discussing settlement and/or limiting of the issues on appeal, and an Administrative Order that identifies that mediation is an optional method the Court may use to effectuate these discussions.

3. Are mediations ordered by the court or is mediation an optional service provided upon request?

The parties and/or counsel are ordered to attend mediation. However, in most cases the parties have been questioned by Office of ADR staff regarding their willingness to attend mediation and they have consented to utilize the process.

4. When did the program begin conducting mediations?

February of 2010

5. How many civil appeals are administered by your court annually?

Approximately 1300

6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.

Office of ADR staff has confidential conversations with counsel and/or self-represented parties. The willingness of the parties to attend a mediation session and the parties' assessment of the likelihood of a settlement are the two most important factors used by staff to assess whether to recommend a case be set in. Also considered are the following factors: the type of case; the posture of the case; the parties' assessment of chances of reversal or remand by the appellate court; the amount in controversy.

7. How many cases were mediated in the most recent year?

February 2011 to February 2012, 187 cases were ordered to mediation.

8. How many cases settled in mediation in the most recent year?

Full Settlements Achieved – 107

Partial Settlements Achieved – 13

9. How does your program define a “partial settlement?”

Partial settlements are defined as cases where mediation eliminated some issues on appeal, but the case proceeded through the appellate process on the remaining issue(s).

10. Does your program offer mediation in cases with self-represented parties?

If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?

In order to effectuate the Court’s dedication to access to justice by all litigants, we do not screen out cases where there are one or more self-represented parties. However, these cases are carefully screened by this office to ensure that the litigants understand the role of a mediator and that there would be a benefit to them in utilizing this process.

11. Who serves as mediators in your program? How many of such mediators are currently active in your program?

Each case is co-mediated by a retired judge of either our circuit or appellate courts and a staff attorney/mediator from the Office of ADR Programs. Our office currently is budgeted to have 3 staff attorney/mediators, including a Director, a Deputy Director and an attorney/mediator. We also currently have over 20 retired judge-mediators.

12. What are the required qualifications for appellate mediators in your program?

Judge-mediators must be retired from either the appellate bench or from the circuit court, our higher-level evidentiary court. Staff attorney/mediators are experienced civil attorneys who have a background in mediation. All mediators have attended advanced mediation training, including appellate mediation training.

13. How are mediators selected or designated for a particular case?

In most cases, any judge-mediator on our roster is qualified to mediate the case. However, for specialized cases, such as family law or worker’s compensation cases, we are careful to select mediators that have some expertise or knowledge in that area of law. We also strive to create a welcoming and comfortable environment for participants and take into consideration factors such as culture, gender, and race.

14. Are your cases mediated by one mediator or are they co-mediated?

Cases are co-mediated with one retired judge-mediator and a staff attorney/mediator.

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

The mediators take a facilitative approach and mediation strategies are utilized by a determination by the co-mediators of what would be most appropriate for the case. As a practical matter, most cases have an analytical component to the mediation.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

The Chief Judge of our appellate court is involved in the policy direction of this program. He is in full support of the program and places the full weight of his office behind it. The Director and Deputy Director of the program work very closely with his office, as well as the Court's Clerk's Office in processing cases through the mediation track and back into the appellate track if the case does not resolve in mediation.

17. What is the annual cost of the program?

Our FY 2012 expenses are projected at \$325,295, including regular PIN employee, contract, and temporary additional assistance employees. The office also shares a part-time administrative assistant with the Staff Attorney's Office and some office supplies and mailing costs are supported by the clerk.

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?

We currently have 3 funded staff-attorney mediator positions, including a Director, a Deputy Director and a Staff Attorney/Mediator. All three serve as mediators. We also have a full-time administrative assistant, and a part-time (shared) administrative assistant.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.

Parties may opt-out of mediation by contacting the mediation office. In most, if not all cases where a party objects to mediation, the case is not ordered. In the rare instance that a case is ordered, but a party later objects, the order is usually vacated. It is our belief that mediation should not, except in rare instances, be required where the parties are not participating of



8) Administrative                      70%

9) Corporations                      75%

22. What types of civil cases, if any, are ineligible for mediation in your program?

Juvenile causes, appeals from guardianships terminating parental rights, and applications and appeals by prisoners seeking relief related to confinement.

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

No.

24. What do you rate as the most significant successes of your appellate mediation program to date?

The intensive screening of cases completed by staff, the co-mediation model, the use of a retired judge-mediator, the post-mediation follow-up completed by staff, the ability to issue consent orders to remand to vacate or modify judgments and orders, the support of the program by the Court and its Chief Judge.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

One issue is the issuance of sanctions for a party/counsel's bad faith participation and/or failure to come with settlement authority. More specifically, the authority that other programs rely upon to order sanctions and the types of sanctions imposed, as well as the mechanism by which evidence of bad faith is presented, opportunity for due process, and the hurdle of collecting this evidence within the parameters of confidentiality.

Another issue is other program's policy and procedures on the remanding of cases by consent order, and whether other courts will vacate or modify judgments and/or orders in the trial court directly by consent order to remand from the appellate court.

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

The number of cases disposed of in this program equal the work of 1.5 judges per year.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate

mediation program.

28. Has your program been evaluated? If so, could you share the results of the evaluation?

This survey is our evaluation.

Mediation Program Name: Office of ADR Programs

Court: Maryland Court of Special Appeals

Court Case Jurisdiction: All civil appeals in Maryland

Court Geographic Jurisdiction: All of Maryland

Name of Mediation Program Director/Administrator: Mala Malhotra-Ortiz, Director

Address: Maryland Judicial Center, 361 Rowe Boulevard, 3<sup>rd</sup> Floor, Annapolis, MD 21401

Telephone: 410-260-3715

Email: mala.ortiz@mdcourts.gov

Website: <http://www.mdcourts.gov/cosappeals/mediation/index.html>

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: Jan 31<sup>st</sup> 2012

Mala Malhotra Ortiz  
Name  
[Signature]  
Signature  
Director  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

Survey Response

# Minnesota



THE MINNESOTA COURT OF APPEALS  
MINNESOTA JUDICIAL CENTER  
25 REV. DR. MARTIN LUTHER KING JR. BLVD.  
ST. PAUL, MINNESOTA 55155

CHAMBERS OF  
HONORABLE MATTHEW E. JOHNSON  
CHIEF JUDGE

(651) 297-1616

April 11, 2012

Honorable Peter B. Krauser  
Chief Judge  
Maryland Court of Special Appeals  
Robert C. Murphy Courts of Appeal Building  
361 Rowe Boulevard  
Annapolis, Maryland 21401

Dear Chief Judge Krauser:

I write in response to your January 10, 2012, letter enclosing a survey concerning state appellate mediation programs. I applaud your efforts to compile this information, and I apologize for the delay in my response.

Below are the responses of the Minnesota Court of Appeals:

1. Our appellate mediation program was established in January 2011. (Before that, we had a pilot program from September 2008 to December 2010.)
2. The supreme court made minor amendments to the Minnesota Rules of Civil Appellate Procedure to provide for our appellate mediation program. In addition, we made minor revisions to our Special Rules of Practice for the Minnesota Court of Appeals.
3. Our appellate mediation program is limited to appeals in family law cases (*i.e.*, marriage dissolutions, including post-decree motions). Mediation is presumed to be mandatory, but the appellate mediation program coordinator occasionally removes a case from the program for various reasons, and either party to the appeal may request an exemption. Approximately two-thirds of family law appeals are referred to a mediator.

4. January 2011. (The pilot program existed from September 2008 to December 2010.)

5. In 2011, we had 1,414 civil appeals of right filed; 711 criminal appeals of right filed; and 96 petitions and writs filed, for total filings of 2,221. During the same period of time, we disposed of 1,430 civil appeals and a total of 2,222 cases.

6. All family law appeals are reviewed by the appellate mediation office. All cases are presumed to be mediated, unless the appellate mediation program coordinator determines that a case is not suitable for mediation or grants a party's request for an exemption.

7. In 2011, approximately 120 cases were mediated through the appellate mediation program.

8. In 2011, 37 percent of appeals referred to a mediator were fully resolved in the mediation process. We do not keep track of partial settlements.

9. We do not define or keep track of partial settlements.

10. Yes, we refer family law cases to mediation even if one or both parties is *pro se*. In 2011, 19 percent of cases referred to mediation involved at least one *pro se* party. We do not treat *pro se* cases differently, although *pro se* status may affect the decision whether to grant an exemption.

11. Family law appeals are mediated by attorneys or mediators in private practice. At present, we have 24 mediators on our roster.

12. To be on our roster of approved mediators, a lawyer must be certified as a family law mediator by the Minnesota Supreme Court.

13. In each case, the appellate mediation program coordinator gives the parties three to five potential mediators. Each party ranks the potential mediators. The appellate mediation program coordinator selects a mediator based on the parties' preferences.

14. We refer an appeal to a single mediator. We are unaware of any mediator who co-mediate appeals with another mediator.

15. We are unaware of the methodologies or approaches used by mediators, and we do not attempt to guide or influence their approaches.

16. The appellate mediation program coordinator reports directly to the Chief Judge. The Chief Staff Attorney provides additional oversight. In addition, we have a mediation committee, consisting of approximately five judges, who meet quarterly and serve in an advisory role over the mediation program.

17. The primary cost of the program is the salary and benefits of the part-time appellate mediation program coordinator. Other costs are postage and other incidental expenses. We believe the total expenses are less than \$40,000 per year.

18. One staff person coordinates the appellate mediation program on a part-time basis.

19. The parties are not permitted unilaterally to opt out of mediation. They may request an exemption. Requests for exemptions are scrutinized carefully and usually denied.

20. Yes, the court may impose sanctions on persons who refuse to participate in mediation. On rare occasions, an appellant has been sanctioned.

21. One hundred percent of appeals in the appellate mediation program are family law appeals.

22. All cases that are not family law appeals are ineligible for the appellate mediation program.

23. No.

24. Our appellate mediation program resolves a significant number of cases with very low expenses to the court. In addition, family law appeals often are factually complex and, thus, require more human resources than the average appeal.

25. At present, we are in the preliminary stages of considering whether to expand our appellate mediation program to other types of civil cases.

26. In both the pilot program and in the first year of the permanent appellate mediation program, we have resolved approximately 40 to 50 appeals per year through

Honorable Peter B. Krauser

page 4

April 11, 2012

the appellate mediation program. This represents approximately two to three appeals per year per judge. The settlement of cases through our appellate mediation program allows the court to devote its limited resources to other cases.

27. Our appellate mediation program coordinator would be happy to provide copies of documents upon request.

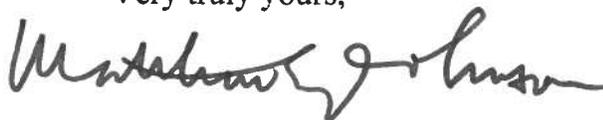
28. Our appellate mediation program has not been evaluated since it became permanent in January of 2011.

29. Family Law Appellate Mediation Program  
Minnesota Court of Appeals  
Maggie Hawkins, Appellate Mediation Program Coordinator  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155  
651-296-6739  
[MJCFamilyLaw.Mediation@courts.state.mn.us](mailto:MJCFamilyLaw.Mediation@courts.state.mn.us)  
<http://www.mncourts.gov/?page=3412>

If you desire any additional information, please feel free to contact Maggie Hawkins or me. I wish you the best of luck in your efforts, and I look forward to seeing the results of your survey.

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals, to use these survey responses in a report created and distributed to appellate courts and other appellate mediation programs.

Very truly yours,



Survey Response:  
Missouri  
Eastern

1. Started appellate settlement program in the mid 1970's
2. Court Rule
3. Both; in some cases it is ordered and parties can also request to participate.
4. August 2010
5. For fiscal year 2011, 1177 civil appeals
6. We do not mediate any direct criminal appeals, post-conviction relief appeals, termination of parental rights appeals, unemployment appeals, driver's license revocation appeals or appeals involving pro se parties when the parties are non-attorneys. In determining whether to mediate appeals involving other areas of the law, we apply general factors including but not limited to: (1) the number of parties and attorneys involved in the case; (2) the number and type of issues expected to be raised on appeal; (3) the standard of review for the issues expected to be raised in appeal; (4) the possible relief sought by the appellant; and (5) the potential weaknesses/risks for each party should settlement not be reached.
7. 95
8. Full settlement 40; partial settlement 0
9. n/a
10. Only if it is clear from the record that the self-represented party is an attorney. These cases involved less than 1% of the conferences held during the last fiscal year.
11. 1 active judge
12. n/a
13. n/a
14. 1 mediator
15. Mediation combined with neutral case evaluation.
16. n/a
17. \$0
18. 2

19. If a case is selected for mediation, the settlement judge sends counsel notice of the date and time of the mediation conference. If counsel for a party subsequently contacts the court indicating the party would like to "opt-out" of mediation, counsel is required to submit a request in writing which explains his or her reasoning for "opting-out." Then the settlement judge, using his discretion, decides whether to grant the request.

20. Yes; no

21. The major types of cases we held mediation conferences on during the last fiscal year were:

Contract:	19.0%
Tort:	7.5%
Insurance:	13.0%
Domestic:	18.0%
Attorney's fees:	5.0%

Out of all cases that settled during the last fiscal year:

25.5% were contract  
15.0% were tort  
10.0% were insurance  
13.0% were domestic  
5.0% were attorney's fees

22. Juvenile appeals, unemployment compensation appeals, driver's license revocation appeals.

23. We used retired appellate judges for many years but now use active judge of the court.

24. Buy-in by attorneys, streamlining screening conferences.

25. Ability to create risk for Respondents ("winners" in trial court).

26. Every case successfully mediated is one less case the court has to write. So it has positively impacted the work load of the court.

27. No

28. Missouri Court of Appeals, Eastern District  
Hon. Glenn Norton  
815 Olive St.  
St. Louis, Mo. 63101  
ph. 314-539-4300  
website: [mo.courts.gov](http://mo.courts.gov) (click on know your courts)

*doug.bader@courts.mo.gov*

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 7/6/12

DOUGLAS R. BADER  
Name

Douglas R. Bader  
Signature

Court Administrator  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

# Survey Response: Missouri Western

## STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established?  
Approximately 1978
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?  
Initially, no formal method. We now have a local court rule.
3. Are mediations ordered by the court or is mediation an optional service provided upon request?  
Mostly court ordered. Court staff counsel suggests files. Occasionally, parties will initiate a request.
4. When did the program begin conducting mediations?  
Approximately 1978
5. How many civil appeals are administered by your court annually?  
~ 850
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.  
Staff counsel reviews incoming appeals for suitability. Generally targets appeals where money is at issue, including maintenance & support.
7. How many cases were mediated in the most recent year?  
81
8. How many cases settled in mediation in the most recent year?  
  
Full settlements 25 cases settled; 43 dismissed after conference scheduled
9. How does your program define a “partial settlement?”  
We do not
10. Does your program offer mediation in cases with self-represented parties?  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?  
Yes / About 15% / No
11. Who serves as mediators in your program? How many of such mediators are currently active in your program?  
Two retired trial judges
12. What are the required qualifications for appellate mediators in your program?  
No formal requirements, have always used active or retired judges

13. How are mediators selected or designated for a particular case?  
At random
14. Are your cases mediated by one mediator or are they co-mediated?  
One mediator
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.  
Combination of neutral case evaluation and facilitative – always point out to both sides the risks of appeal
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.  
Settlement clerk schedules (& re-schedules) conferences
17. What is the annual cost of the program?  
-0-
18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?  
One – does not serve as mediator
19. If parties are ordered to mediation in your program, are they permitted to “opt-out” of mediation? Please describe the grounds permitted to opt-out.  
Parties may opt out, but both must agree to opt out
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe.  
Yes, we have dismissed appeals if appellant fails to show up for a settlement conference
21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)
- |                                   |             |
|-----------------------------------|-------------|
| 1) <u>family law/non-juvenile</u> | <u>60</u> % |
| 2) <u>other civil</u>             | <u>40</u> % |
| 3) _____                          | ____ %      |
| 4) _____                          | ____ %      |
| 5) _____                          | ____ %      |
| 6) _____                          | ____ %      |

7) \_\_\_\_\_ %

22. If you are able to provide settlement statistics per case type, please do so.
23. What types of civil cases, if any, are ineligible for mediation in your program?  
Cases in which penalty imposed (loss of license)
24. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.  
Not really, except we tend to do more now than in years past
25. What do you rate as the most significant successes of your appellate mediation program to date?  
Getting parties to reach agreement after impressing on them the risks to both sides of an appeal
26. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?
27. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?  
It has decreased the number of civil appeals that must be decided by opinions.  
Never a discussion about the need for additional resources at the intermediate appellate court level.
28. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.  
attached
29. Has your program been evaluated? If so, could you share the results of the evaluation?  
No

Mediation Program Name: no formal name

Court: Missouri Court of Appeals, Western District

Court Case Jurisdiction: Intermediate Appellate Court – all appeal cases not within exclusive jurisdiction of Mo. Supreme Court

Court Geographic Jurisdiction: 45 counties in western and central Missouri

Name of Mediation Program Director/Administrator: Monja Calvert, Settlement Conference Coordinator

Address: 1300 Oak St.  
Kansas City, MO 64113

Telephone: 816-889-3611

Email: [monja.calvert@courts.mo.gov](mailto:monja.calvert@courts.mo.gov)

Website:

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 01/23/12

Terence G. Lord  
Name

Terence G. Lord  
Signature

Clerk of Court  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

WESTERN DISTRICT SPECIAL RULE

**RULE XXXVI—SETTLEMENT CONFERENCE**

After the notice of appeal has been filed, the Court may schedule a conference for the purpose of exploring the possibilities of settlement. If any party fails to comply with any part of the settlement conference scheduling order, the party and/or counsel may be subject to a variety of sanctions, including an assessment of attorney's fees, costs and even dismissal.

(Amended December 16, 2004; effective March 1, 2005.)

Survey Response

# Montana

STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established? 1997
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? Court rule
3. Are mediations ordered by the court or is mediation an optional service provided upon request? Our rule provides for mandatory mediation in specific types of cases.
4. When did the program begin conducting mediations? 1997
5. How many civil appeals are administered by your court annually? In 2011, there were ~~410~~ 370
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process. All appeals in workers' compensation cases, domestic relations cases (excluding paternity, adoption, youth in need of care, and youth court cases), and all money judgments are subject to mandatory appellate mediation.
7. How many cases were mediated in the most recent year? 159 in 2011
8. How many cases settled in mediation in the most recent year?  
Full settlements 22 Partial settlements n/a
9. How does your program define a "partial settlement?" n/a
10. Does your program offer mediation in cases with self-represented parties? yes  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? 21.9% Does your program employ different policies or screening in cases involving self-represented parties? no
11. Who serves as mediators in your program? How many of such mediators are currently active in your program? Attorneys who are residents of Montana and have 5+ years of practice may sign up to be mediators. Currently, there are 73 mediators.
12. What are the required qualifications for appellate mediators in your program? See above.
13. How are mediators selected or designated for a particular case? The parties have 15 days in which to select a mediator; if no selection is made within that time, the Clerk of Court's office appoints a mediator for the appeal.
14. Are your cases mediated by one mediator or are they co-mediated? One mediator.
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and

other approaches or services. The method is up to the mediator, and we do not keep any records on how they choose to approach mediation.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program. The Montana appellate mediation program was designed to be self-executing and does not require judicial participation.

17. What is the annual cost of the program? Other than time of employees of the Clerk of Court's office, there is no cost to the judicial branch.

18. How many staff persons assist in the management and administration of your appellate mediation program? 2 staff in the Clerk of Court's office. How many of such persons, if any, also serve as mediators in your program? 0

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out. No formal opt-out procedure exists.

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe. On motion, the Court may impose sanctions. Sanctions have been very rare, but may, and have, included dismissal of the appeal.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort) Our mediation requirement is limited to specific types of cases; all workers' comp., domestic relations, and money judgment cases are mediated.

1) \_\_\_\_\_ %

2) \_\_\_\_\_ %

3) \_\_\_\_\_ %

4) \_\_\_\_\_ %

5) \_\_\_\_\_ %

6) \_\_\_\_\_ %

7) \_\_\_\_\_ %

21. If you are able to provide settlement statistics per case type, please do so. For 2011:  
domestic relations: 8%  
workers' compensation: 33%  
money judgments: 14%

22. What types of civil cases, if any, are ineligible for mediation in your program? Only domestic relations, workers' compensation, and money judgment cases are eligible.
23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe. No.
24. What do you rate as the most significant successes of your appellate mediation program to date? Any time the parties can reach a settlement represents a success.
25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country? Payment of mediators has been an issue, given the self-executing nature of our program.
26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?  
The effect on the court's workload and on judicial resources has been negligible. The Clerk of Court's office estimates that about 5% of its staff time is devoted to the appellate mediation program.
27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program. See attached.
28. Has your program been evaluated? If so, could you share the results of the evaluation? Yes. The 26-page report of the University of Montana School of Law Mediation Clinic and the State Bar of Montana Dispute Resolution Committee is not available online, to our knowledge.

Mediation Program Name: Mandatory Appellate Mediation

Court: Montana Supreme Court

Court Case Jurisdiction: Montana's sole state appellate court

Court Geographic Jurisdiction: Montana

Name of Mediation Program Director/Administrator: Ed Smith, Clerk of the Montana Supreme Court. Contact person: Rex Renk.

Address: 215 N. Sanders, Helena, MT 59620

Telephone: (406)444-3858

Email: rrenk@mt.gov

Website: <http://courts.mt.gov/supreme/default.mcp>

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1/30/12

Christine Wethern  
Name

\_\_\_\_\_  
Signature

staff attorney, Montana Supreme Court  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

## Rule 7, Montana Rules of Appellate Procedure

### Rule 7. Mandatory appellate alternative dispute resolution.

(1) Statement of purposes. The mandatory appellate alternative dispute resolution procedure is designed to achieve the following goals:

- (a) Provide an alternative means to resolve certain civil appeals and to enhance public confidence in the appellate process;
- (b) Help the parties avoid the additional legal expense and emotional cost of an appeal;
- (c) Reduce the court's mounting backlog of civil appeals by settling cases with a minimal use of court resources;
- (d) Help the parties realistically explore a settlement; and
- (e) Provide a speedy and just resolution of the dispute.

(2) Appeals subject to rule. The following categories of appeals shall be subject to the provisions of this rule:

- (a) Workers' compensation. All appeals from the Workers' Compensation Court.
- (b) Domestic relations. Appeals in domestic relations cases, including but not limited to all dissolution issues, child custody and support issues, maintenance issues and modifications of orders entered with respect to those issues; but excluding proceedings regarding abused or neglected children, paternity disputes, adoptions, and all juvenile and contempt proceedings when the excluded matters constitute the only issues on appeal. In addition, if there has been a finding by a district court that one of the parties has been a victim of domestic violence, the appellate mediation may be conducted by telephone upon motion submitted to the mediator by either party.
- (c) Money judgments. Appeals in actions seeking monetary damages/recovery.
- (d) Appeals which the supreme court, in its discretion, designates as appropriate for mediation.

### (3) Time Limitations and Supplementary Process.

(a) Time limitations. Upon filing a notice of appeal in the manner and time required by rules 4 and 6, the parties and the mediator shall have 75 days within which to complete the process required by this rule. However, in the event the parties are made subject to this rule only as a result of a cross-appeal, the parties shall have 75 days from the filing of the notice of cross-appeal.

(b) Supplementary process. The process required by this rule shall be supplementary to, and have no effect on, the parties' duties, obligations, and time requirements otherwise provided for in these rules; provided, however, that the parties may, by stipulation filed with the clerk of the supreme court and served on the clerk of the district court, hold the time requirements of these rules in abeyance pending completion of the process required by this rule. In the event the parties stipulate to holding time requirements of these rules in abeyance, all such time requirements shall run from the earlier of the date of the filing of the mediator's report, or the expiration of the 75-day time limit.

### (4) Selection or appointment and payment of mediator - immunity.

(a) Mediators shall be selected or appointed as provided in sections (4)(b) and (d) of this rule and shall enjoy such judicial immunity as the supreme court would enjoy if performing the same functions. Upon selection or appointment, the clerk of the supreme court shall mail to the mediator a copy of the notice of selection or order of appointment of mediator, the mediator instructions, and mediator's, attorneys', and parties' mediation evaluation forms.

(b) The parties may jointly select a mediator for purposes of complying with the mediation process required by this rule within 15 days of the filing of the notice of appeal or

cross-appeal which subjects the case to the requirements of this rule; in the event the parties do not jointly select a mediator, one will be assigned by the clerk of the supreme court.

(c) In the event the parties voluntarily select a mediator, the appellant shall file with the clerk of the supreme court a notice of selection of mediator, substantially complying with Form 5 in the Appendix of Forms, within the above-referenced 15-day deadline.

(d) In the event the parties do not voluntarily and timely select a mediator, the clerk of the supreme court shall appoint as a mediator for the appeal the next self-nominated attorney on a list maintained by the clerk for that purpose pursuant to section (4)(e) of this rule. The order of appointment, substantially complying with Form 6 in the Appendix of Forms, shall be signed by the clerk of the supreme court and served upon the mediator and the parties to the appeal.

(e) The clerk of the supreme court shall maintain 3 lists of resident Montana attorneys who are members in good standing of the State Bar of Montana, have been licensed as attorneys for no less than 5 years, and have indicated their desire to be appointed as mediators for purposes of this rule by completing and submitting to the clerk an original and 2 copies of the mediator background information form available from the clerk. The separate lists will reflect those attorneys desiring appointment as mediators for the workers' compensation, domestic relations, and/or money judgment appeals which are subject to this rule.

(f) The parties shall share the mediator's fee and incidental expenses equally. However, in money judgment cases where there is \$5,000 or less at issue and the judgment is for \$5,000 or less, any mediator appointed by the clerk of the supreme court under section (4)(d) shall serve pro bono, and the mediator's incidental expenses shall be shared equally by the parties. All pro bono appointments shall be so indicated in the order of appointment.

(5) Mediation Process. The mediation process required by this rule shall comply with the procedures provided in this section.

(a) The mediation required by this rule is an informal, confidential, nonadversarial process in which an impartial third person, the mediator, assists the parties to an appeal in resolving the differences between them. The decision-making authority remains with the parties; the mediator has no authority to compel a resolution or to render a judgment on any issue. The role of the mediator is to encourage and assist the parties to reach their own mutually-acceptable resolution by facilitating communication; helping to clarify issues, interests, and the appellate perspective; fostering joint problem-solving; and exploring settlement alternatives.

(b) Upon selection or appointment to mediate an appeal as provided by this rule, the mediator shall schedule a mediation conference between the parties for the purpose of attempting to resolve the issues on appeal.

(c) The conference shall be held in person; provided, however, that if distance, time, or other considerations make an in-person conference impractical, the mediator may hold the conference by telephone at such time and place as the mediator may determine. The mediation shall proceed in substantial compliance with the requirements of this rule and the guidelines and format set forth in the mediator's instruction sheet.

(d) The appellant, or the cross-appellant in those cases where only the cross-appeal results in the case being subject to this rule, shall submit the required statement of position to the mediator and to the responsive party within 15 days of the date the notice of selection or order of appointment of the mediator is filed under section (4) of this rule. The responsive party shall have 7 days to submit a responsive statement of position. In the event of a cross-appeal, the appellant shall have an additional 7 days to submit its statement of position relative to the issues raised by the cross-appeal.

(e) The parties' respective submissions shall not exceed 10 pages in length, double spaced, on standard letter-sized paper; provided, however, that the parties may attach such exhibits of record and transcript excerpts as the parties may wish the mediator to consider.

(f) The parties shall serve on the mediator and each party their written statement of position substantially complying with Form 7 in the Appendix of Forms and containing, at a minimum, the following:

- (i) A statement of issue(s) on appeal and the manner in which each issue was preserved;
- (ii) A statement of the standard of review applicable to each issue;
- (iii) The position of the party with respect to each issue, with citations to legal authority;

and

(iv) In the case of the appellant and any cross-appellant, a copy of the order or judgment from which the appeal is taken.

(g) In addition to the statements of position to be served on the mediator and opposing parties, each party may submit to the mediator a separate confidential submission containing such additional information relative to its position regarding settlement as it may wish to tender in order to facilitate the mediation process required by this rule. Unless otherwise agreed, such a submission shall not exceed 5 pages. The confidential submission, if any, shall be served on the mediator contemporaneously with the service of the party's statement of position.

(h) Each party, or a representative of each party with authority to participate in settlement negotiations and affect a complete compromise of the case, shall participate in the mediation conference. If an insurance carrier, other indemnitor, or self-insurance administrator is involved, a representative with ultimate settlement authority shall participate in the mediation conference.

(6) Proceedings confidential. The mediation process shall be confidential. All proceedings held, submissions tendered, and statements made by anyone in the course of the mediation process required by this rule constitute offers to compromise and statements made in compromise negotiations pursuant to M. R. Evid. 408 and are inadmissible pursuant to the terms of that rule.

(7) Completion of mediation process.

(a) Immediately upon the conclusion of the mediation conference, the mediator shall file a mediator's report substantially complying with Form 8 in the Appendix of Forms with the clerk of the supreme court, and serve copies on the parties.

(b) If the mediator files a report, with proper notice to the parties, indicating that the matter has been settled, the court will dismiss the appeal 30 days later absent a motion to keep the cause number open.

(c) None of the forms, notices, or stipulations to be filed with the clerk of the supreme court shall contain any information relating to the parties' respective positions regarding the issues on appeal, the parties' positions regarding settlement, or any substantive matter which is the subject of the litigation; the exclusive and sole purposes of forms and notices to be filed with the clerk of the supreme court are to maintain status records and statistics, to ensure orderly compliance with the process required by this rule, and to provide a mechanism for returning the case to the ordinary appeal process where mediation has not resolved the case and resulted in a stipulation for dismissal.

(d) The parties are encouraged to continue to pursue settlement efforts in the event the mediation process required by this rule does not resolve the appeal and the case returns to the ordinary appeal process.

(8) Sanctions. Substantial noncompliance with this rule may, on motion of a party or by the supreme court sua sponte, result in the assessment of mediator fees, imposition of monetary

sanctions, costs, dismissal of the appeal, or such other sanction as the supreme court deems appropriate.

(9) Self-executing, no motion practice. Except as provided in sections (7) and (8) of this rule and in addressing a motion to determine whether an appeal is subject to section (2) of this rule, the provisions of this rule are designed to be and are self-executing and not subject to motion practice. Motions to opt out of mediation, to substitute mediators, or for extensions of time to complete mediation will be subject to summary denial.

# Survey Response: Nevada

STATE APPELLATE MEDIATION PROGRAM SURVEY  
NEVDADA SUPREME COURT SETTLEMENT PROGRAM

1. What year was your appellate mediation program established?  
1997.

2. What formal method was used to establish the program?  
An Administrative Order adopting a court rule (NRAP 16).

3. Are mediations ordered by the court or is mediation an optional service provided upon request?  
Ordered by the court (a notice of assignment is issued).

4. When did the program begin conducting mediations?  
Spring of 1997.

5. How many civil appeals are administered by your court annually?  
About 800-850 civil appeals per year.

6. How are appellate cases selected for mediation?  
All civil appeals in which all parties are represented by counsel and do not involve termination of parental rights are eligible for assignment to the program. Most eligible cases are assigned to the program. Although a mediator may remove an appeal from the program if it is determined that the case is not appropriate for mediation during the intake process. Also, under NRAP 16(a), the program administrator shall determine whether to assign an appeal to the program upon docketing. Some reasons that a case might be exempt initially is that it requires expedited action by the court (e.g., involves a ballot or election matter); it's related to a case that has recently been through the program and either did not settle or was removed for other reasons; etc.

7. How many cases were mediated in the most recent year? 404.

8. How many cases settled in mediation in the most recent year?  
230 full settlements      3 partial settlements

9. How does your program define a "partial settlement?"  
Formal dismissal of at least one party. (statistically counted as a non-settlement)

10. Does your program offer mediation in cases with self-represented parties?

No.

11. Who serves as mediators in your program? How many are currently active?

50 mediators are currently on the panel appointed by the court. Consists of a mix of practicing attorneys trained in mediation and full time ADR professionals. Mediators are appointed by the court and are paid as independent contractors.

12. What are the required qualifications for appellate mediators in your program?

Completion of a 40+ hour course in civil mediation approved by the court.

Demonstrated experience in appellate law and mediation.

Specialized training is required to be assigned domestic cases.

13. How are mediators selected or designated for a particular case?

Program administrator assigns cases to mediators based on the mediator's availability; subject area expertise; and the mediator's preference for types of cases.

14. Are your cases mediated by one mediator or are they co-mediated?

Generally, cases are mediated by one mediator. Although all newly appointed mediators must co-mediate two cases before being assigned cases. Also, there have been instances where the court has approved co-mediation when requested by the parties due to the complexity of issues or number of parties.

15. Please describe the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, etc.

The court recommends/encourages the use of the facilitative model of mediation. However, mediators have the freedom to utilize the approach they are most comfortable with, or use the approach they believe is best suited for a particular case. Early in the program, the approach was very evaluative and probably closer to neutral case evaluation or a traditional settlement conference. However, over the years through procedural changes and training the court has emphasized a more facilitative mediation model. Currently, the panel is probably a mix of facilitative and evaluative approaches, but gradually becoming more facilitative.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

The settlement program administrator is a supervisory level staff attorney position. The program administrator is responsible for case assignments, all case processing matters while appeals are assigned to the program (e.g., drafting orders resolving motions, filing deadlines, tracking for overdue items, etc.), approval of billing/payments to mediators, administering program budget, designing training sessions, creating and distributing statistical reports, resolving complaints regarding the program or mediators, etc.

The program administrator reports to the Justice-Liaison to the program (one justice who is selected to oversee administration of the program). The court has also created a core committee of 6 mediators that meet with the justice liaison and the program administrator regarding appointment and evaluation of mediators and other issues as they arise. The core committee makes recommendations to the court regarding program policies and mediator appointments.

17. What is the annual cost of the program?

For FY 2012, the program has an annual budget of \$477,000 for payment to mediators and related program expenses, and an \$18,000 annual budget for training. (This does not include staff salaries). The program has typically run under budget each year and has reverted excess funds.

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediator in the program?

There are primarily two full-time program positions: the program administrator (a supervisory staff attorney) and the program coordinator (a paralegal position).

Neither position conducts mediations for the program.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.

Parties are not allowed to opt-out of mediation on their own. A mediator may, however, recommend that an appeal be removed from the program after conducting the required premediation telephone conference

with all counsel (part of the intake process). Generally, appeals are not removed by request of the parties without the mediator's recommendation.

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons arising from the mediation process? If so, have such sanctions been imposed?

Yes, parties and/or counsel may be sanctioned based on failure to participate in the program. Mediators may recommend that the court consider imposing sanctions when a party or counsel has failed to attend a scheduled mediation session or has otherwise failed to comply with the procedural rules of the program. Sanctions can be monetary or dismissal of the appeal. The court has imposed sanctions (usually after entering an order to show cause to allow the party/counsel potentially being sanctioned to explain their side or to respond to the recommendation). Sanctions are imposed infrequently. Typically, if it is the party-appellant that has failed to comply, the appeal will be dismissed. If it is the party-respondent or counsel for either side, a monetary sanction may be imposed.

21. What are the major case types you currently mediate, with approximate percentages (most recent year?) (e.g. contract, domestic, tort)

Of the 466 cases completed in the program in 2011:

- 1) Contract 13%
- 2) Personal Injury 12%
- 3) Other (miscellaneous/complex) 11%
- 4) Domestic 11%
- 5) Workers Comp 9%
- 6) Tort 7%
- 7) Foreclosure/Mortgage 7%
- 8) Employment 5%
- 9) Medical Malpractice 5%
- 10) Real Property 4%
- 11) Corporate/Business Dispute 3%
- 12) Probate 2%
- 13) Construction Defect 2%
- 14) Government 2%
- 15) Administrative 2%
- 16) Landlord/Tenant 2%
- 17) Water/Mining 1%
- 18) Tax 1%
- 19) Commercial 1%

22. If you are able to provide settlement statistics per case type, please do so.

Overall settlement rates by case type since 2001:

- 1) Contract 49%
- 2) Personal Injury 51%
- 3) Other (miscellaneous/complex/combo) 55%
- 4) Domestic: Custody: 56%  
Non-Custody: 59%
- 5) Workers Comp 60%
- 6) Tort 47%
- 7) Foreclosure/Mortgage 41%
- 8) Employment 43%
- 9) Medical Malpractice 34%
- 10) Real Property 46%
- 11) Corporate/Business Dispute 57%
- 12) Probate 65%
- 13) Construction Defect 58%
- 14) Government 37%
- 15) Administrative 49%
- 16) Landlord/Tenant 48%
- 17) Water/Mining: Mining: 67%  
Water: 26%
- 18) Tax 35%
- 19) Commercial 51%

23. What types of civil cases, if any, are ineligible for mediation in your program?

Any case in which a party is not represented by counsel or any that involve the termination of parental rights.

24. Has your appellate mediation been significantly modified in program or service design or operation policies since its creation? If so, please describe.

Yes, an extensive evaluation was undertaken in 2005. Based on that evaluation, the court amended the program rule (NRAP 16); program policies; forms and documents; mediator qualifications and continuing requirements; mediator appointment process; formed a mediator core committee to provide feedback to the court and program administrator; adopted a code of conduct; devised a website; etc.

In January 2011, the program's evaluation survey forms that are sent to all participants were changed to solicit more detailed information from parties and counsel. Also, a new process for distributing and collecting the forms was implemented to bring about a higher rate, which has been successful.

25. What do you rate as the most significant successes of your appellate mediation program to date?

I believe the extensive evaluation that the court undertook in 2005 was a significant success. Every aspect of the program was evaluated. Many perspectives were considered: the court; program staff; mediators; attorneys, etc. The court was very open about the evaluation and contracted with an outside appellate mediation expert (Nancy Yeend) to review the program and make recommendations. A public hearing was held on the matter to solicit feedback. The process resulted in significant changes in policies and procedures. Of course it's still an ongoing process and improvements are still being made.

26. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

Effective ways of evaluating mediators.  
Dealing with staffing/budget cuts.

27. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

Without an intermediate appellate court, the Nevada Supreme Court's caseload is quite high. Accordingly, the appellate mediation program is an integral part of managing the court's civil caseload.

28. Please attach copies of relevant rules, orders guidelines, operational forms, brochures, article and other materials that may help describe your appellate mediation program.

NRAP 16, program forms, mediator requirements, code of conduct, evaluation surveys, a brief description of the program, professional biographies for all mediators, and other materials are available on the program's webpage:

<http://www.nevadajudiciary.us/index.php/programoverview>

29. Has your program been evaluated? If so, could you share the results of the evaluation?

Yes, an extensive evaluation was undertaken. The court contracted with an outside consultant, Nancy Yeend to review the program and make recommendations.

Mediation Program Name: Nevada Supreme Court Settlement Program

Court: Nevada Supreme Court

Court Case Jurisdiction: All civil and criminal appeals; original writ proceedings.

Court Geographic location: Offices in Carson City, NV and Las Vegas, NV

Name/Contact Info of Mediation Program Director/Administrator:

Tom Harris  
Supervisory Staff Attorney/Settlement Program Administrator  
Nevada Supreme Court  
Settlement Program  
201 South Carson St.  
Carson City, NV 89701  
Phone: 775-684-1600 or 702-486-9300  
E-mail: [settlement@nvcourts.nv.gov](mailto:settlement@nvcourts.nv.gov)

Permission to use survey responses granted by email  
7/6/12 From Tom Harris to Maryland Court of  
Special Appeals, office of mediation

Survey Response

# **New Hampshire**

## NEW HAMPSHIRE APPELLATE MEDIATION PROGRAM SURVEY

1. The New Hampshire Appellate mediation program was established on September 1, 2009.
2. The program was started by "Rules of the Supreme Court of the State of New Hampshire Procedure Rules 1 to 34 Rule 12-A. Mediation. (see Attachment A)
3. Mediation is an optional service provided upon request by the Parties.
4. The program began conducting mediations in October 2009.
5. The total number of appeals filed with the New Hampshire Supreme Court since the inception of the Appellate Mediation program follows:

2009: 934 cases

2010: 880 cases

2011: 910 cases

6. Appellate cases are selected for mediation in the following way:
  - (a) an appeal is filed with the Court;
  - (b) the Court accepts the case or is mandated to accept the case;
  - (c) Court issues an Acceptance Order accepting the case (see Attachment B);
  - (d) Acceptance Order states that the case is eligible for mediation;
  - (e) All parties agree to mediate;
  - (f) Moving party submits the completed mediation agreement form to the court within 15 days of the date of the Acceptance Order; and
  - (g) Upon receipt of the completed mediation agreement form, an order is issued referring the case to the Office of Mediation and Arbitration

7/8. In 2011, parties in twenty-eight cases agreed to mediation. Of those 28 these are the following dispositions:

2 settled prior to mediation

8 settled through mediation

1 withdrawn for private mediation

7 did not settle in mediation

8 cancelled/did not pay/inappropriate

2 pending

9. Partial Settlement is defined in the form titled "Appellate Mediation Report" as follows (see Attachment C):

"Cases settled in part. List issues that were not resolved. It is not necessary to file partial settlement agreement with the Supreme Court. Appellant will be ordered by court to file a revised statement of questions presented for review. Remaining issues:"

Furthermore, as outlined in Rule 12-A (see Attachment A), the rule states as follows:

"If the director of the Office of Mediation and Arbitration reports that there has not been a full settlement of a case referred for mediation...the court ordinarily will resume processing the case in accordance with Supreme Court rules unless circumstances would make this inappropriate."

10. Our program does offer mediation for self-represented parties. In 2011, of the 28 cases referred to mediation, 9 involved one or more self-represented parties. Of these nine cases, 4 did not settle, 4 cancelled/did not pay/inappropriate, and 1 pending. We do not have different policies or screening in cases involving self-represented parties.
- 11/12. Retired full-time judges serve as mediators in our program. Currently, we have seven retired judges on our roster.
13. Mediators are selected by the Office of Mediation and Arbitration. We talk to the judges and consider the rotation system of the roster.
14. Our cases use one mediator, not a co-mediation model.
15. I have never attended an appellate mediation. We leave it up to the mediators to use the dispute resolution processes that the neutral considers appropriate for the particular case.
16. The direction and management of our appellate mediation programs is handled by the staff of the Office of Mediation and Arbitration. The judicial oversight is handled primarily by Chief Justice Linda Dalianis.
17. The Office of Mediation and Arbitration, which has a full-time ADR Coordinator and two part-time assistants, oversees all judicial branch ADR programs. The ADR Coordinator and one staff person administer the Appellate Mediation program.
18. The Supreme Court staff assists in referring cases to mediation. Once the cases are referred to mediation the Office of Mediation and Arbitration handles the administration of the mediations.

19. Parties are not ordered to mediation in our program.
20. Our program does not authorize the imposition of sanctions for failure to participate in mediation or for other reasons rising from the mediation process.
21. The 28 cases that we mediated in 2011, involved the following major case types:

- (1) civil – 14 cases; 50%
- (2) administrative – 7 cases; 25%
- (3) domestic relations – 7 cases; 25%

Settlement statistics per case type:

- (1) civil – 5 cases involving self-represented parties
  - 1 settled prior to mediation
  - 3 settled through mediation
  - 5 did not settle
  - 3 cancelled/did not pay/withdrawn/inappropriate
  - 2 pending
- (2) administrative – no cases involved self-represented parties
  - 1 settled prior to mediation
  - 3 settled through mediation
  - 1 withdrawn for private mediation
  - 1 did not settle
  - 1 did not pay/file forms
- (3) domestic relations – 4 cases involved self-represented parties
  - 2 settled through mediation
  - 1 did not settle
  - 4 cancelled/did not pay/did not agree

22. The following cases are ineligible for mediation:

- (1) criminal
- (2) domestic violence
- (3) election
- (4) guardianship
- (5) involuntary commitment
- (6) juvenile including abuse/neglect
- (7) CHINS
- (8) delinquency
- (9) termination of parental rights
- (10) cases brought be a prisoner in a custody of a correctional institution; and
- (11) stalking

23. Our program is just over two years old and there have been no changes or modification to it at this time.

24. The most significant successes of our appellate mediation program to date are as follows:

- (i) Judges on the mediation roster enjoy the work;
- (ii) Judges on the mediation roster support the program; and
- (iii) Our Supreme Court judges support the program,

25. The major challenges or issues our program continues to face is to increase interest and participation in the program by the parties who file appeals to the NH Supreme Court.

26. The major impact of the program is that parties who file appeals to the NH Supreme Court have another option that offers the potential for more satisfactory and durable resolutions achieved in a more expeditious timeframe that is more cost effective.

27. See Attachments

28. Our program has not been evaluated.

Mediation Program Name: Appellate Mediation Program

Court: New Hampshire Supreme Court

Court Case Jurisdiction: Cases pending at the supreme court

Geographic Jurisdiction: New Hampshire

Name of Mediation Program Director: Laurie S. Levin

Address: 45 Chenell Drive, Suite 2, Concord, NH 03301

Telephone: 603-410-0225

Email: [LLevin@courts.state.nh.us](mailto:LLevin@courts.state.nh.us)

Website: [www.courts.state.nh.us/adrp/index.htm](http://www.courts.state.nh.us/adrp/index.htm)

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: January 31, 2012

Laurie S. Levin  
ADR Coordinator

**THE STATE OF NEW HAMPSHIRE**  
**JUDICIAL BRANCH**  
<http://www.courts.state.nh.us>

Court Name: New Hampshire Supreme Court

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_  
(if known)

**APPELLATE MEDIATION REPORT**

Name of mediator: \_\_\_\_\_

Date of mediation session: \_\_\_\_\_

Indicate result of mediation session below:

**Entire case settled. No further action is required. Appellant(s) will withdraw appeal within 15 days.** It is not necessary to file settlement agreement with the Supreme Court.

**Entire case settled. Further action is required before appellant(s) withdraws appeal.** It is not necessary to file settlement agreement with the Supreme Court. Identify party responsible for taking the required action, the specific action required, and the date by which party will take such action. (For example: Appellant; File motion for Labor Department approval; 11/1/09.)

Party Responsible	Action Required	Date:
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Case settled in part. List issues that were not resolved.** It is not necessary to file partial settlement agreement with the Supreme Court. Appellant will be ordered by court to file a revised statement of questions presented for review.

Remaining issues:  
\_\_\_\_\_  
\_\_\_\_\_

**Case did not settle.** Processing of appeal should continue.

**Mediation cannot proceed.** Processing of appeal should continue. Case could not be mediated for the following reason:  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that a copy of this report was mailed/given to all attorneys of record and/or pro se parties.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Mediator

**Return form to:**  
**New Hampshire Supreme Court, 1 Charles Doe Drive, Concord, NH 03301**

**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**In Case No. 2011-0000, \_\_\_\_\_ v. \_\_\_\_\_, the clerk of court on January 24, 2012, issued the following order:**

On January 23, 2012, \_\_\_\_\_ filed a completed Appellate Mediation Agreement Form. Accordingly, the case is referred to the Office of Mediation and Arbitration (OMA) for mediation. See Rule 12-A(4). A copy of the notice of appeal shall be provided to OMA with this order.

On or before February 8, 2012, each party shall pay the \$200.00 mediation fee to OMA. See Rule 12-A(5). Checks shall be made payable to the Office of Mediation and Arbitration. The payment and a copy of this order should be sent to:

Office of Mediation & Arbitration  
45 Chenell Dr. Suite 2  
Concord NH 03301

The parties shall review OMA's Appellate Procedural Rules on the judicial branch website (<http://www.courts.state.nh.us/adrp/appellate/index.htm>) and shall download the Party Information Form and the Party's Confidential Mediation Statement, which must be filed with OMA on or before February 9, 2012.

Further processing of the case by the court is suspended for a period of 90 days. See Rule 12-A(6). All communications and filings of the parties related to the mediation session shall be sent to OMA and shall not be filed with the court, with the exception of filings relating to whether the case should be remanded to the court to resume processing of the case or requesting an extension of time to complete mediation.

This order is entered pursuant to Rule 21(8).

**Eileen Fox,  
Clerk**

Distribution:

Office of Mediation and Arbitration  
Attorneys

# **RULES OF THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE**

## **PROCEDURAL RULES 1 TO 34**

### **Rule 12-A. Mediation**

**(1) Cases pending at the supreme court may be referred to the Office of Mediation and Arbitration (OMA) for mediation as set forth in this rule. All mediation will be conducted by a retired full-time judge.**

**(2) With the exception of cases listed in the following paragraph, cases accepted by the court may be referred to the Office of Mediation and Arbitration (OMA) for mediation upon the agreement of all parties.**

**The following cases are not eligible for mediation: criminal cases; domestic violence cases; election cases; guardianship cases; involuntary commitment cases; juvenile cases, including abuse and neglect, CHINS, delinquency, and termination of parental rights cases; cases brought by a prisoner in the custody of a correctional institution; and stalking cases.**

**(3) When an acceptance order is issued in a case that appears to be eligible for mediation under this rule, the clerk shall provide the moving party with a mediation agreement form. If all parties agree to mediation, the moving party shall submit the completed mediation agreement form to the court within 15 days of the date of the acceptance order, and shall send a copy of the completed form to all parties. In a case in which more than one appeal has been filed, the order shall indicate who will be considered the moving party for the purpose of submitting the mediation agreement form.**

**(4) Upon receipt of a completed mediation agreement form, an order will be issued by the clerk referring the case to the OMA for mediation.**

**(5) Any order referring a case to the OMA for mediation shall impose a fee of \$200.00 per party to be paid to the OMA. This fee will be used by the OMA to pay mediator compensation, and is not refundable. On its own motion, or upon motion of the parties, the court may order an individual \$200.00 fee to apply to multiple plaintiffs or defendants, if under the circumstances of the case, the court determines that the per party fee would cause undue hardship if it were applied to individual parties, or if one fee for multiple parties on the same side is deemed equitable by the court. Parties who are indigent may petition the court for waiver of the \$200.00 fee.**

**(6) Unless the order referring a case for mediation provides otherwise, when a case is referred to the OMA for mediation, further processing of the case by the court will be suspended for a period of 90 days. If the director of the OMA or the mediator believes that additional time is needed to complete the mediation, the director or mediator may file a notice with the court of an automatic extension of no**

more than 30 days. Upon filing of the notice, further processing of the case shall be suspended for the additional time without further order of the court. Extensions of time of more than 30 days may be requested only by motion to the court and are not favored.

(7) After a case has been referred to the OMA for mediation, the OMA shall be responsible for selecting a mediator and scheduling a mediation session. The parties shall comply with the OMA rules for appellate mediation. All communications and filings of the parties related to the mediation session shall be sent to the OMA and shall not be filed with the court, with the exception of filings relating to whether the case should be remanded to the court to resume processing of the case or requesting an extension of time to complete mediation.

(8) If the director of the OMA determines at any time after a case has been referred that the case should not be mediated, the director shall notify the clerk in writing. Thereafter, an order will be issued indicating that processing of the case will resume in accordance with Supreme Court rules.

(9) Within 15 days after the conclusion of a mediation, the mediator or the director of the OMA shall file a written report with the court of the results of the mediation. The report shall state whether a full or partial settlement was reached and describe the effect of the settlement on the pending case. The report shall not disclose the mediator's assessment of any aspect of the case or confidential matters discussed during the session or sessions.

(10) If the director of the OMA reports that there has not been a full settlement of a case referred for mediation, or upon expiration of the period during which processing of the case was suspended, the court ordinarily will resume processing the case in accordance with Supreme Court rules unless circumstances would make this inappropriate.

(11) Mediation proceedings and information relating to those proceedings shall be confidential. Information submitted or discussed during mediation shall not be disclosed or used in any subsequent proceeding. Statements made and documents prepared by a party, attorney, or other participant in aid of such proceeding shall be privileged and shall not be disclosed to any court or arbitrator or construed for any purpose as an admission against interest. Mediation proceedings under this rule are deemed settlement conferences consistent with the Rules of Evidence. Parties shall not introduce into evidence, in any subsequent proceeding, the fact that there was a mediation or any other material concerning the conduct of the mediation except as required by the Rules of Professional Conduct or the Mediator Standards of Conduct. Evidence that would otherwise be admissible in another proceeding shall not be rendered inadmissible as a result of its use in mediation.

(12) The OMA may adopt procedural rules to govern the appellate mediation process.

Survey Response

# **New Mexico**

New Mexico

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established? Pilot Program in 1998; permanent program in 1999.
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? New Mexico Court of Appeals uses a "Miscellaneous Order" currently, Misc. Order No. 1-42 is the controlling order. A copy of this order is attached with this survey response. (This order is also online: *Go to [www.nmcourts.gov](http://www.nmcourts.gov), proceed to link for "Court Sites," then go to the link for "NM Court of Appeals."* *On the Court of Appeals web site, put your cursor on the button "About the Court," a drop down menu will appear, move cursor down to "Mediation Office," and another menu will appear to the right, allowing you to select and view the "Order Establishing Program."*)
3. Are mediations ordered by the court or is mediation an optional service provided upon request? Both of those statements are true for the New Mexico Court of Appeals. There are actually three ways cases can end up in appellate mediation: (1) Counsel can request appellate mediation services at any time there is jurisdiction in the Court of Appeals, which begins upon the docketing of the appeal. (2) The Court of Appeals judges can order cases into mediation at any time during the pendency of the appeal; typically they would do this after they are assigned the case for review. (3) The Appellate Mediation Office can schedule a case for mediation upon assignment of the case to the Court's "general calendar" (which is the point when the Court has ordered full briefing.)
4. When did the program begin conducting mediations? 1998
5. How many civil appeals are administered by your court annually? Our Court has no official statistic breaking out civil cases. In fiscal year 2010-2011 fiscal year (7/1/10 through 6/30/11) the Court of Appeals administered 834 cases.
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process. The New Mexico Court of Appeals has a unique process involving "summary disposition" for a large number of appeals. Of the appeals that survive the summary calendar process, and proceed on to the Court's general calendar, the following categories of cases are referred to the Mediation Office for review: Civil matters pending before the Court except applications for stays, appeals in which one of the parties is incarcerated or in which a non-attorney is a pro se party and in cases involving the revocation of a driver's license, a petition for extraordinary relief, or an appeal arising out of the Mental Health and Developmental Disabilities Code or the Children's Code. In addition counsel may request appellate mediation services, and appellate mediation services will be made available in "any matter pending before the court". Lastly, any Court of Appeals Judge working on a case may order that case into mediation.

7. How many cases were mediated in the most recent year? 90 cases were mediated.
8. How many cases settled in mediation in the most recent year? 47 cases were settled.

Full settlements 46 Partial settlements 2

9. How does your program define a "partial settlement?" A partial settlement (counted as ½ of a settlement) includes the resolution of anything less than the entire appeal. Examples of ½ settlements, include a settlement involving only one plaintiff in a multiple plaintiff case (or any number of plaintiffs less than all plaintiffs), or settlement by plaintiff(s) with one defendant in a multi-defendant case (or any number of defendants less than all defendants), or resolution of only some of the appellate issues (or resolution of anything less than all appellate issues). Basically, for simplicity sake, anything less than a complete settlement and complete dismissal of the appeal, is counted as a ½ settlement.
10. Does your program offer mediation in cases with self-represented parties? If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties? The New Mexico Court of Appeals Appellate Mediation Program will very occasionally offer mediation services to self-represented litigants, after extensive discussion with counsel and the self represented litigant to determine whether the self represented party is capable of representing themselves in a mediation. This is a very subjective decision, and the decision whether to conduct a mediation or not is at the discretion of the appellate mediator. The appellate mediator attempts to take into account the relative negotiation power between parties, knowledge of the law, and sophistication of the self-represented litigant to avoid conducting mediations where a self represented party would be at a disadvantage. Self represented parties are encouraged to consider retaining counsel for the limited purpose of representing the party at the mediation, as permitted, if conditions are met, under New Mexico law.
11. Who serves as mediators in your program? How many of such mediators are currently active in your program? I am the only appellate mediator for the New Mexico Court of Appeals; parties are permitted, if they wish, to arrange for private mediation, with the consent and support of the court.
12. What are the required qualifications for appellate mediators in your program? Law degree, state bar licensure, mediation training, experience in appellate practice.
13. How are mediators selected or designated for a particular case? With only one mediator, there is no selection of designation process.

14. Are your cases mediated by one mediator or are they co-mediated? Single mediator model.
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services. Primarily facilitative, but willing to provide some evaluation upon request and consent of a party.
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program. The judges maintain a completely hands off approach (a Chinese wall) when it comes to the appellate mediation process. Accountability and oversight of the Appellate Mediation Office is maintained via written twice yearly written reports, and face to face meetings, at least twice a year, with the Appellate Mediator reporting to the Court's Mediation Committee, comprised of three sitting judges, the Clerk of the Court, and one staff attorney. The written reports include a yearly "annual report" of statistics on the number of cases opened, number of cases closed, number of settlements achieved, the time frames for processing cases, along with a financial report on the operational costs of running the office. A midyear summary report compiles the number of cases opened, cases closed, and settlements achieved in the first six months of the fiscal year. Copies of both the annual report, and the midyear summary are provided to the Mediation Committee and Chief Judge of the Court.
17. What is the annual cost of the program? For the most recent fiscal year, 2010 to 2011, costs were \$161,459.
18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program? The New Mexico Court of Appeals Appellate Mediation Office is staffed with one full time appellate mediator/director of the program, and one half time (20 hours a week) administrative assistant.
19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out. If a Court of Appeals Judge orders a case into mediation, there is no opt out procedure. (Although I suppose a party could file a motion requesting reconsideration of the judge's order?) When mediations are scheduled by the Appellate Mediation Office, our scheduling letter includes an "opt out" process as follows: "If parties confer and are in agreement that there is no opportunity for resolution of any issues at appellate mediation, please let me know at your earliest convenience, but no later than one week prior to the scheduled mediation." The Appellate Mediator will then decide whether to cancel the mediation, or contact the counsel to discuss the situation further.
20. Is your program authorized to impose sanctions for failure to participate in

mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Yes, sanctions are possible, but have never been imposed.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort) The New Mexico Court of Appeals Appellate Mediation Office does not record any statistics related to case type.

1)	_____	____%
2)	_____	____%
3)	_____	____%
4)	_____	____%
5)	_____	____%
6)	_____	____%
7)	_____	____%

22. What types of civil cases, if any, are ineligible for mediation in your program? Any case pending before the New Mexico Court of Appeals is eligible for appellate mediation services. Any matter pending before the Court of Appeals is eligible for mediation services.

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe. In 1999, the New Mexico Court of Appeals expanded the types of cases eligible for appellate mediation services to include "any matter pending before the Court".

24. What do you rate as the most significant successes of your appellate mediation program to date? The acceptance of appellate mediation by the bar; the positive responses of counsel on the post mediation evaluation surveys, indicating that counsel, for the most part, feel that they received a quality mediation experience, regardless of whether a settlement was achieved or not; and the general increase in the number of settlements achieved over the years.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country? Cases seem to take an increasing amount of time to go through the appellate mediation process. Less and less cases seem to resolve in one mediation session, and more cases seem to require post mediation shuttle

negotiation by telephone and/or email to reach a settlement. When settlements are reached, it seems to take a lot more follow up by the appellate mediator to get parties to draft and sign settlement agreements, to follow through with remand motions, and lower court hearings to approve settlements reached in appellate mediation, and more oversight is required of the appellate mediator to get parties to file dismissal paperwork to closing out the appeals.

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources? It is estimated that the Appellate Mediation Office resolves the equivalent number of cases as one fulltime judgeship; so one full time mediator, and one half time administrative assistant reduces the case load for the Court equivalent to one judge, one fulltime administrative assistant, one full time clerk for the judge, and some part time support from staff counsel.
27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program. Attached are (1) Misc. Order No, 1-42 establishing the Appellate Mediation Office, and providing procedural rules, (2) copy of Mediation Conference Procedures and Suggestions for Effective Mediation Representation (sent to counsel with scheduling letter), (3) sample scheduling letters, (one for telephonic mediation and one for in person mediation), (4) most cumulative recent post mediation survey results.
28. Has your program been evaluated? If so, could you share the results of the evaluation? No evaluation has ever been done on this program. Counsel complete anonymous post mediation evaluation surveys. A copy of the most recent survey results is attached.

Mediation Program Name: New Mexico Court of Appeals Appellate Mediation Office

Court Jurisdiction: N. M. S. A. 1978, § 34-5-8 **Court of appeals; appellate jurisdiction**

A. The appellate jurisdiction of the court of appeals is coextensive with the state, and the court has jurisdiction to review on appeal:

- (1) any civil action not specifically reserved to the jurisdiction of the supreme court by the constitution or by law;

- (2) all actions under the Workmen's Compensation Act, [FN1] the New Mexico Occupational Disease Disablement Law, the Subsequent Injury Act and the federal Employers' Liability Act; [FN2]
- (3) criminal actions, except those in which a judgment of the district court imposes a sentence of death or life imprisonment;
- (4) postconviction remedy proceedings, except where the sentence involved is death or life imprisonment;
- (5) actions for violation of municipal or county ordinances where a fine or imprisonment is imposed;
- (6) decisions of administrative agencies of the state; and
- (7) decisions in any other action as may be provided by law.

Court Geographic Jurisdiction: Statewide Jurisdiction

Name of Mediation Program Director/Administrator: Robert Rambo

Address: P.O. Box 25306  
Albuquerque, NM  
87125

Telephone: (505) 767-6102

Email: coarer@nmcourts.gov

Website: <http://coa.nmcourts.gov/>

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: January 31, 2012

Name: Robert Rambo

  
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Signature

Title: Appellate Mediator

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**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**  
**IN THE MATTER OF THE COURT OF APPEALS**  
**SETTLEMENT CONFERENCE PROCEDURES.**

**Miscellaneous Order**  
**No. 01-42**  
2009 AUG 19 AM 11:11  
COURT OF APPEALS  
STATE OF NEW MEXICO  
GINA MAESTAS

**ORDER**

This matter has come before the Court upon re-evaluation of the Appellate Mediation Office and the Court is satisfied that the office continues to significantly reduce the number of cases to be decided by opinion and continues to provide a valuable service to litigants. The Court therefore adopts the following procedures, pursuant to Rule 12-313 NMRA 1998, to hold conferences to facilitate the settlement of cases pending on appeal.

**IT IS THEREFORE ORDERED THAT:**

- 1. Appellate Mediation Office and Appellate Mediator.** The Appellate Mediation Office operates under the direct supervision of an Appellate Mediator, an employee of the Court designated to oversee implementation of the program. Judges, their law clerks, prehearing staff attorneys, and administrative personnel of the Court shall not have access to information related to settlement that is generated by the activities of the Appellate Mediation Office.

1           **2. Mediation conference; scheduling and purpose.** The Appellate  
2 Mediation Office may schedule and conduct mediation conferences in any  
3 matter pending before the Court. The primary purpose of a mediation  
4 conference is to explore settlement and simplify issues, but matters relating to  
5 processing of the appeal may be discussed.

6           **3. Participation of counsel and parties.** Counsel shall participate in  
7 every scheduled mediation conference and in related discussions. Generally, a  
8 party may participate but need not unless required by the Appellate Mediator.  
9 Conferences are conducted by telephone unless the Appellate Mediation Office  
10 directs otherwise.

11           **4. Preparation of counsel for mediation conference; settlement**  
12 **authority.** In preparing for the initial conference, counsel shall consult with  
13 their clients and obtain as much authority as feasible to settle the case and to  
14 agree on case management matters. These obligations continue throughout the  
15 mediation process.

16           **5. Confidentiality.** Statements made during a mediation conference  
17 and in related discussions are confidential and shall not be disclosed to any court  
18 by the Appellate Mediation Office, counsel, or the parties. See Rule 11-408  
19 NMRA 1998. The Appellate Mediator shall not communicate anything to the  
20 other side that was revealed in a private discussion without authorization from

1 counsel. The proceedings shall not be recorded by counsel or the parties.

2       **6. Conference order; mediator authority.** The Appellate Mediator  
3 may cause an order to be entered controlling the course of the mediation  
4 proceedings. The Appellate Mediator is a delegate of the Court. All conference  
5 orders and other directives from the Appellate Mediation Office shall be treated  
6 as any other Court directive.

7       **7. Extensions.** The time allowed by Rule 12-208 for filing a  
8 docketing statement, by Rule 12-211 NMRA 1998 for causing a transcript to be  
9 filed, by Rule 12-212 NMRA 1998 for designating exhibits and depositions, and  
10 by Rules 12-210 and -213 NMRA 1998 for filing briefs and memoranda is not  
11 automatically tolled pending a mediation conference, but the Appellate Mediator  
12 has authority to grant extensions of time, whether specifically requested or not  
13 and whether requested orally or in writing. If no extension order is entered,  
14 applicable time limits continue to run.

15       **8. Request for mediation conference by counsel.** Counsel or any  
16 Court of Appeals Judge working on a case may request a mediation conference  
17 by contacting the Appellate Mediation Office. All requests shall be kept  
18 confidential. The Appellate Mediator shall determine whether a conference will  
19 be held.

20       **9. Sanctions.** The Court may impose sanctions if counsel or a party

1 fails to comply with these procedures or an order entered pursuant to these  
2 procedures.

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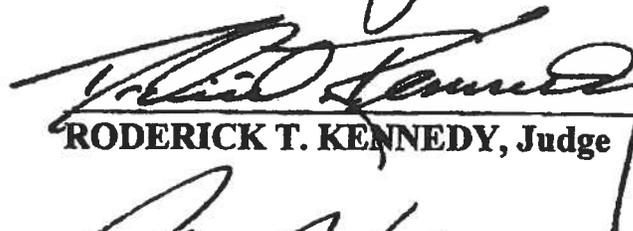
  
CYNTHIA A. FRY, Chief Judge

  
JAMES J. WECHSLER, Judge

  
MICHAEL D. BUSTAMANTE, Judge

  
JONATHAN B. SUTIN, Judge

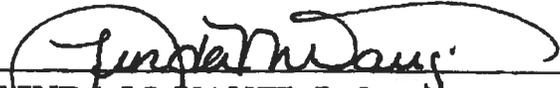
  
CELIA FOY CASTELLO, Judge

  
RODERICK T. KENNEDY, Judge

  
MICHAEL E. VIGIL, Judge

  
ROBERT E. ROBLES, Judge

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LINDA M. VANZI, Judge

  
TIMOTHY L. GARCIA, Judge

**The New Mexico Court of Appeals**  
**MEDIATION CONFERENCE PROCEDURES AND**  
**SUGGESTIONS FOR EFFECTIVE MEDIATION REPRESENTATION**

The Appellate Mediation Office conducts mediation conferences pursuant to Rule 12-313 NMRA, and Court of Appeals Order No. 1-42.\* Mediation Procedures are governed by Order No. 1-42\* and the procedures outlined herein, not the Mediation Procedures Act. (See NMSA 1978, § 44-7B-3(B)4 (2007)). The mediation conferences are designed to reduce the time and expense of civil appeals by addressing any matter that may aid in their disposition. The mediation conferences offer parties and their counsel confidential, no cost, risk-free opportunities to explore possibilities for voluntary settlements.

### **Case Selection**

Any matter pending before the Court is eligible for mediation. Although the Appellate Mediation Office typically schedules civil cases for mediation upon assignment to the general calendar, mediation services are available at any time during the pendency of the appeal. Counsel may request mediation by contacting the Mediation Office; such requests are kept confidential unless permission is given to disclose the request. Additionally, the Court may refer cases for mediation at any time. The Mediation Office does its best to schedule conferences only in cases that appear to have some potential for settlement; should a case be scheduled for mediation that seems unsuited or inappropriate for mediation counsel are requested to contact the Mediation Office.

### **Appellate Mediation Conference Format**

After a brief opening statement by the mediator, each side will be asked to make an opening statement that should include its perspectives on the conflict and possibilities they see for a mediated outcome. Often, by going beyond the issues on appeal, participants are able to identify important needs, values, and interests that serve as a basis for global resolution of the dispute. Legal issues may be directly discussed, however, the purpose is not to decide or reach a conclusion about the merits of the appeal, but rather to facilitate an understanding of the issues and an evaluation of the risks and opportunities for each side. Candid examination of the case can help the parties reach consensus on a reasonable settlement. The mediator may inquire whether any procedural questions or problems can be resolved by agreement.

*\* Available online at [www.nmcourts.com](http://www.nmcourts.com), by using the link for "Court Sites," then linking to "NM Court of Appeals." Once on the Court of Appeals web site put your cursor on the button "About the Court," a drop down menu will appear, move your cursor down to "Mediation Office," and another menu will appear to the right allowing you to select and view the "Order Establishing Program."*

*\*\* Appeals in which one or more parties are not represented by counsel are not included in the mandatory program. However, a mediation conference may be scheduled in such cases where all parties, both those unrepresented as well as those represented, voluntarily consent to participate.*

### **Extensions of Time**

The times on appeal are not suspended upon notice of a mediation conference. However, the Court recognizes that a case's settlement potential may decline as substantial funds are expended on an appeal. In order to moderate such expenditures in appropriate cases while settlement is being considered, counsel are encouraged to orally request the mediator to grant an extension of time on deadlines imposed by the Court. Such requests may be made before, during, and after a scheduled conference. The mediator has complete authority to grant such extensions of time. No formal motions are required.

### **What Participants Can Expect**

The mediator typically probes for each party's underlying needs and interests in an effort to help the parties create and explore options for resolving the dispute. The mediator may lead a considered and sometimes detailed exploration of the cases' merits, depending on the extent to which the participants place importance on their ability to predict how the Court of Appeals would resolve the appeal. The Mediation Office welcomes the opportunity to go beyond just the issues in the appeal to explore the possibilities of global settlement of any and all issues related to the parties.

### **What the Court Expects from Counsel**

Mediation is most productive when counsel are conversant with the pertinent facts and law in a case and are fully aware of their clients' interests, goals, and needs. Sessions are not productive when counsel present and maintain extreme positions and engage in hard, bottom-line bargaining. Counsel should obtain advance authority from their clients to make those commitments as may reasonably be anticipated. By developing and discussing a realistic view of the consequences of not reaching an agreement, counsel can obtain the authority to settle the case if the mediation results in a settlement opportunity that is favorable to the client. Experience has shown that in most cases there is substantial movement from prior settlement positions. Counsel are strongly urged to consider having their clients present or available by phone at the time of the conferences.

### **Mandatory Participation--Voluntary Settlement**

Although mediation conferences are relatively informal, they are official proceedings of the Court and the Court may require all parties to participate. The mediation process is nonbinding, so no settlement is complete until all parties fully agree to settlement terms and conditions and the necessary documents are finalized.

### **Confidentiality**

The Court, by rule and verbal agreement of the parties at each conference, ensures that nothing said by the participants, including the mediator, is disclosed to anyone on the Court of Appeals or any other court that might address the case's merits. The Court will not reveal any request by counsel for mediation without the requesting party's permission. Ex parte communications are also confidential except to the extent disclosure is authorized. This confidentiality rule applies in all cases including those referred for mediation by a panel.

### **How to Prepare for a Mediation Conference**

- Prepare thoroughly (as if you were going to a hearing or a trial) with the ultimate goal of resolving the dispute in mind. Make a candid assessment of the respective strengths and weaknesses of both sides' legal positions. Be prepared to suggest an approach for the mediator to take in an attempt to settle the case (e.g. "problem" to be resolved, sequence of issues). Understand your client's priority of interests. Imagine creative solutions.
- Understand the rules of the Court and the role of the mediator.
- Advise the mediator if you believe it might be helpful to invite the participation of an entity who is not a party to the appeal.
- Consider contacting opposing counsel in advance of the conference as a means to establish a positive working relationship.
- Consider the principal-agent issues (e.g. incentives, roles, information) that may impact on each side's behavior.

### **The "Authority" Issue in Mediation**

- If "having the right person involved in the negotiation" has been a problem in the past, raise the issue with the mediator before the mediation session. Obtain a clear understanding of who will be present at the mediation and what authority they will have.
- If your client is a government or institution, understand the settlement approval process that applies and discuss your concerns and timetable issues with the mediator in advance.
- Understand whether the person has authority to decide or to "report and recommend" a proposed settlement to a superior.
- Have someone with authority present or available.

### **How to Work with the Mediator**

- Follow the mediator's cues. Anticipate questions such as: (1) What happened? (2) How do you feel about the situation and what underlying needs would you like have satisfied? (3) What do you want from the mediation in terms of priorities, interests, results?
- If the mediator asks you to restate a point, be patient. The mediator may be asking you questions for clarification or to elicit information that the other party needs to hear.

### **The Role of Case Evaluation in the Mediation**

- Mediation is not designed for "deciding past rights and past wrongs"--that is more suitably the role of courts and arbitration. It is designed to help parties look forward to develop solutions for problems.
- The mediator will not predict how the court will rule in a particular case, but rather attempt to clarify the tensions surrounding the issues on appeal.
- The mediator may provide objective court information--how the court operates. The mediator may discuss generally how a case gets assigned to a non-summary calendar, the probabilities of the case being decided by a formal opinion, time lines, and generic reversal rates.

### **Elements of Effective Communication**

- A skillful presentation does not need to be conciliatory. A reason based approach to settlement may serve to generate a rigorous analysis of the risks and benefits of both reaching a settlement and continued litigation. There is nothing wrong with stating all the reasons for settlement but at the same time communicating that you are prepared for a judicial resolution of the legal issues. The style and tone of your approach will have a substantial influence in persuading the other side to listen to you and to seriously consider what you are saying.
- Discuss the “common ground” that the parties may have in seeking to resolve the situation.
- Encourage your client to speak if you believe it appropriate, and let your client respond directly to questions from the mediator or the other side, if you are prepared to do so.

### **Private Conferences with the Mediator**

- Be clear about what information you expect the mediator to treat as confidential.
- Use this opportunity to (1) do reality checking with your client; (2) discuss expectations with your client; (3) explore your strengths and weaknesses in the case; (4) discuss the other party’s needs or interests; (5) discuss what information the mediator can use to do “reality-testing” of other party’s expectations and position.

### **Telephone Conference Mechanics**

The telephone mediation conference will be conducted using a commercial system that is accessible over any touch tone telephone. The following information is designed to let you know what to expect while using the system.

- The Appellate Mediation Office will initiate the telephone conference by calling the phone number on file for you with the Court. Please advise if the Mediation Conference Notice lists an incorrect telephone number, or you wish to take the call at a different phone number.
- If you would like additional participants at other telephone numbers included in the mediation conference, please provide the Appellate Mediation Office with their names and telephone numbers.
- If you become disconnected during a conference call, just hang up and the mediator will call you back to reconnect you to the conference.
- The telephone conferencing system does have the capability for break out sessions making it possible for you to speak privately with any of the other conference participants or to speak privately with the mediator.

*Further information is available from the Appellate Mediation Office, New Mexico Court of Appeals, Box 2008, Santa Fe, New Mexico 87504. Telephone 505-827-3694. Fax 505-827-6642.*

**State of New Mexico  
Court of Appeals**

Post Office Box 25306  
Albuquerque, NM  
87125

(505) 767-6102  
fax (505) 841-4614  
coarer@nmcourts.gov

Robert Rambo, Esq.  
Appellate Mediator

KEYBOARD(Enter date)2012

KEYBOARD(Title)  
KEYBOARD(Address)  
KEYBOARD(City/State/Zip)

Re: KEYBOARD(Underlined Case), Ct. App. No. KEYBOARD(Number)

**TELEPHONE MEDIATION CONFERENCE NOTICE**

Dear KEYBOARD( Title):

Pursuant to Court of Appeals Order No. 1-42, Settlement Conference Procedures, the Appellate Mediation Office will hold a **TELEPHONIC MEDIATION CONFERENCE** on KEYBOARD(Date of Conf.), 2011, at KEYBOARD(Time of Conf.). Conference participants will need a touch tone telephone to call the following toll free number: **1-866-244-8528** and enter the following pass code: **318110, followed by the # key.** (A more detailed set of conference call instructions are enclosed.) Please allow at least two hours for the conference. If you have a conflict with the date or time please speak with opposing counsel to determine alternate dates and times and call Charlene at (505) 827-3694.

This conference will be an informal meeting to identify the parties' needs and interests at this stage of the litigation, assess the risks and benefits of proceeding with the appeal, and explore options for global settlement. Enclosed please find information relating to the Appellate Mediation Program.

KEYBOARD(Counsel) haKEYBOARD(s/ve) also been notified of this conference. Please contact this office by telephone immediately if we need to notify additional lawyers. **If parties confer and are in agreement that there is no opportunity for resolution of any issues at appellate mediation, please let me know at your earliest convenience, but no later than one week prior to the scheduled mediation.** I can be reached by e-mail at [coarer@nmcourts.gov](mailto:coarer@nmcourts.gov) , or by telephone at (505) 767-6102.

Sincerely,

Robert Rambo  
Appellate Mediator

Encl.: (2)

**State of New Mexico  
Court of Appeals**

Post Office Box 25306  
Albuquerque, NM  
87125

(505) 767-6102  
fax (505) 841-4614  
coarer@nmcourts.gov

Robert Rambo, Esq.  
Appellate Mediator

KEYBOARD(Enter date)2012

KEYBOARD(Title)  
KEYBOARD(Address)  
KEYBOARD(City/State/Zip)

Re: KEYBOARD(Underlined Case), Ct. App. No. KEYBOARD(Number)

**IN PERSON MEDIATION CONFERENCE NOTICE  
AT ALBUQUERQUE COURT OF APPEALS**

Dear Mr. -or- Ms. :

Pursuant to Court of Appeals Order No. 1-42, Settlement Conference Procedures, this case has been scheduled for an **IN PERSON MEDIATION CONFERENCE at the MINZNER LAW CENTER in Albuquerque, on KEYBOARD(Date of Conf.), 2011, at KEYBOARD(Time of Conf.)** Please allow the KEYBOARD(entire morning/entire afternoon) for the conference. If you have a conflict with the date or time please speak with opposing counsel to determine alternate dates and times and call Charlene at (505) 827-3694.

Lead counsel and the party, or party's representative with authority to settle the case, located within 150 miles of Albuquerque are anticipated to attend in person. Those located farther than 150 miles may attend by telephone. The conference will be an informal meeting to identify the parties' needs and interests at this stage of the litigation, assess the risks and benefits of proceeding with the appeal, and explore options for global settlement. Enclosed please find information relating to the Appellate Mediation Program.

Parking for the Minzner Law Center is in the "L" lot adjacent to the building; please do not park in Judge's parking lot in front of the building. Parking passes are required and a limited number of free passes are available from the Clerk's Office (in exchange for holding your driver's license). If there are no free passes available, parking passes may be purchased at the UNM. School of Law Administration Office located just inside the main entrance to the Law School.

KEYBOARD(Counsel) haKEYBOARD(s/ve) also been notified of this conference. Please contact this office by telephone immediately if we need to notify additional lawyers. **If parties confer and are in agreement that there is no opportunity for resolution of any issues at appellate mediation, please let me know at your earliest convenience, but no later than one week prior to the scheduled mediation.** I can be reached by e-mail at [coarer@nmcourts.gov](mailto:coarer@nmcourts.gov) or by telephone at (505) 767-6102.

Sincerely,

Robert Rambo  
Appellate Mediator

**MEDIATION PROGRAM QUESTIONNAIRE RESPONSES**

01/01/11 - 06/30/11

Response nos. #1551 - #1592

	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree	N/A	Total Responses
You understood the requirements & goals of this program.	34	6	0	0	0	0	40
The timing of the mediation session(s) was convenient for you.	29	9	0	1	0	0	39
The mediator was neutral.	37	4	0	0	0	0	41
The mediator helped improve communication between the parties.	31	6	1	1	0	0	39
The mediator kept the discussion on focus.	34	7	0	0	0	0	41
The mediator helped identify options and alternatives.	28	11	2	0	0	0	41
The mediator helped evaluate the risk of continued litigation.	10	4	2	0	0	0	16
The mediator helped resolve procedural issues	12	3	1	0	0	0	16
*The mediator helped clarify issues.	10	6	0	0	0	0	16
*The agreement you reached is clear.	10	4	1	0	0	0	15
*The agreement you reached is fair to you.	10	5	1	0	0	0	16
*The agreement you reached is workable.	10	5	1	0	0	0	16
**The agreement you reached is fair to the other side(s).	10	5	0	0	0	0	15
*The agreement will last	10	7	1	0	0	0	18
You would recommend this program to others?	35	4	1	0	0	0	40

*	= questions on non-settled cases.
**	= questions on settled cases.

Mediation Questions	
#1	Prior to the conference, what did you think the chances were that this case would settle prior to a decision by the Court of appeals? 0% - no chance at all of settlement 50% - 50/50 chance of settlement 100% - certainly would have settled
#2	What, if anything, could the mediator have done to improve the chances of settlement of this case?
#3	What aspect of this program did you find <b>most</b> valuable or helpful?
#4	What aspect of this program did you find <b>least</b> valuable or helpful?
#5	Specifically, how, if at all, did the mediator assist in the settlement of this case?
#6	Please tell us any comments you may have about your experience, including suggestions for the improvement of the Appellate Mediation Program.

Ques #1	Ques #2	Ques #3	Ques # 4	Ques #5	Ques #6
#1552 50%	Appeal Decision	Robert Rambo	N/A	Great grasp of issues, great suggestions	Robert Rambo was Excellent
#1553 50%	No Settlement	Effective Outcome			Excellent return on Investment
#1554 85%	It would have been much more difficult to reach the settlement	The assistance of R. Rambo on getting proper motions before the Crt. Of Appeals and on getting the other side to focus on effectively the agreement.	N/A	See #3	

Ques #1	Ques #2	Ques #3	Ques #4	Ques #5	Ques #6
#1555 90%	It would not have settled w/o this mediation program	Mr Rambo experience with settlement and procedure		Kept us talking	
#1556 20%	I believe my Client had a 50% of success	Robert Rambo was excellent		We patiently but effectively worked with a difficult Plaintiff	
#1559	We would have gone thru the court system	Mr Rambo was patient, effective and did a great job with both parties			Keep the program
#1565 0%	The court would have ruled for the defense, but it might have been to late because client would have been deported.	Robert Rambo - very focused - worked very hard		He kept calling both sides with negotiating ideas	Terrific program and Rambo is a perfect mediator
#1567 0%	Nothing - this case cannot be resolved and I tried to get the other side to agree that it was not resolvable by mediation	The question is not applicable to this case	See answer #3	I represented the Appellee and don't know how much the mediator impressed on appellants the risk of no success on appeal, but if he didn't discuss the absence of merits on appeal for them then he should have!	

Ques #1	Ques #2	Ques #3	Ques # 4	Ques #5	Ques #6
#1568 50%	Would have been deported with no recourse	Discovering its usefulness in a criminal appeal		See above	Robert did an admirable job of facilitating the parties in their mutual desire to reach a just result. In hindsight, he realized that some interested persons should have been more fully involved with the process. We all learned from that aspect of the experience, and Robert was skillfully able to meaningfully involve those folks before the final resolution
#1582 50%	Major delays	Phone conferences, Robert Rambo's suggestions		Worked on a document that all parties were satisfied with	Need firmer time deadlines for each party
#1584 50%	Successful appeal, followed by 1 to 3 separate trails	The court willingness to coordinate the mediation with the actions pending at the trail court levels		Significant assistance in bringing all parties together	
#1590 50%	We expected affirmance in favor of Worker	Resolution of all issues		encouragement of movement of both sides to a workable solution	The scheduling was too far into the appellate process. It should have been scheduled earlier before substantial work on the appeal.

Ques #1	Ques #2	Ques #3	Ques # 4	Ques #5	Ques #6

Quarterly Totals						
	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree	Quarterly Total
You understood the requirements and goals of this program	1092	543	24	4	3	1669
<i>Bal. Forward</i>						
01/01/11 - 06-30/11	34	6	0	0	0	40
07/01/11 - 12/30/11						
<b>Total</b>	<b>1126</b>	<b>549</b>	<b>24</b>	<b>4</b>	<b>3</b>	<b>1709</b>

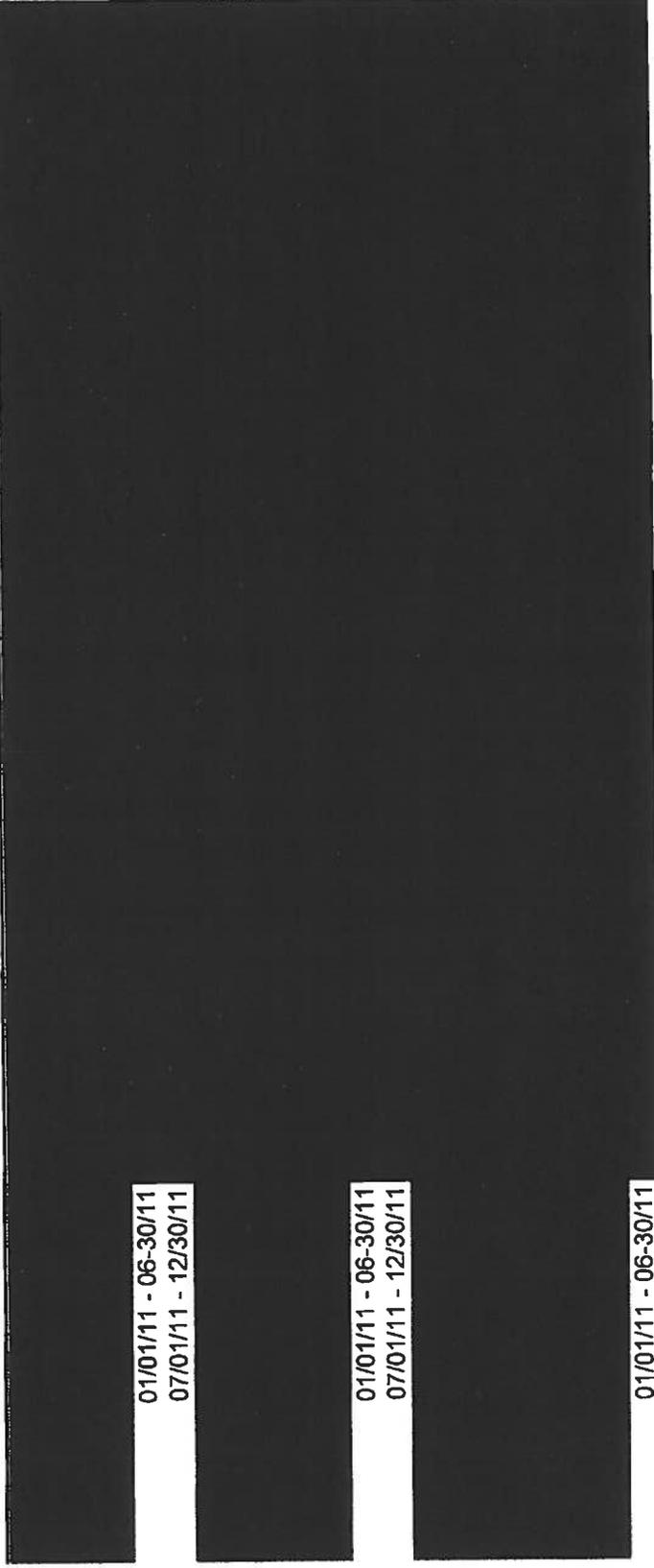
The timing of the mediation session(s) was convenient for you.	1090	573	20	19	7	1713
<i>Bal. Forward</i>						
01/01/11 - 06-30/11	29	9	0	1	0	39
07/01/11 - 12/30/11						
<b>Total</b>	<b>1119</b>	<b>582</b>	<b>20</b>	<b>20</b>	<b>7</b>	<b>1752</b>

The mediator was neutral	1274	385	39	11	7	1718
<i>Bal. Forward</i>						
01/01/11 - 06-30/11	37	4	0	0	0	41
07/01/11 - 12/30/11						
<b>Total</b>	<b>1311</b>	<b>389</b>	<b>39</b>	<b>11</b>	<b>7</b>	<b>1759</b>

The mediator helped improve communication between the parties.	779	473	255	146	43	1749
<i>Bal. Forward</i>						
01/01/11 - 06-30/11	31	6	1	1	0	39
07/01/11 - 12/30/11						
<b>Total</b>	<b>810</b>	<b>479</b>	<b>256</b>	<b>147</b>	<b>43</b>	<b>1788</b>

pg 2 | Strongly | Quarterly

The mediator kept the discussion on focus.	Agree	Agree	Undecided	Disagree	Disagree	N/A	Total
<b>Bal. Forward</b>	931	597	86	44	20	17	1695
01/01/11 - 06-30/11	34	7	0	0	0	0	41
07/01/11 - 12/30/11							
<b>Total</b>	<b>965</b>	<b>604</b>	<b>86</b>	<b>44</b>	<b>20</b>	<b>17</b>	<b>1736</b>
<b>The mediator helped identify options and alternatives.</b>							
<b>Bal. Forward</b>	767	531	222	105	27	56	1708
01/01/11 - 06-30/11	28	11	2	0	0	0	41
07/01/11 - 12/30/11							
<b>Total</b>	<b>795</b>	<b>542</b>	<b>224</b>	<b>105</b>	<b>27</b>	<b>56</b>	<b>1749</b>



01/01/11 - 06-30/11  
07/01/11 - 12/30/11

01/01/11 - 06-30/11  
07/01/11 - 12/30/11

01/01/11 - 06-30/11

07/01/11 - 12/30/11

The agreement you reached is clear. **Bal. Forward** 298 102 7 1 1 13 422

01/01/11 - 06-30/11 20 4 1 0 0 0 25  
 07/01/11 - 12/30/11

**Total** 318 106 8 1 1 13 447

The agreement you reached is fair to you. **Bal. Forward** 283 152 36 10 1 20 502

01/01/11 - 06-30/11 19 5 1 0 0 0 25  
 07/01/11 - 12/30/11

**Total** 302 157 37 10 1 20 527

The agreement you reached is workable. **Bal. Forward** 315 55 16 2 1 17 406

01/01/11 - 06-30/11 19 5 1 0 0 0 25  
 07/01/11 - 12/30/11

**Total** 334 60 17 2 1 17 431

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The agreement you reached is fair to the other side(s).

**Bal. Forward** 327 130 23 1 0 21 502

01/01/11 - 06-30/11 20 4 0 0 0 0 24  
 07/01/11 - 12/30/11

**Total** 347 134 23 1 0 21 526

The agreement will last.

**Bal. Forward** 335 123 19 2 1 19 499

**Strongly Agree** **Agree** **Undecided** **Disagree** **Strongly Disagree** **N/A** **Quarterly Total**

01/01/11 - 06-30/11 17 7 1 0 0 0 25  
 07/01/11 - 12/30/11

<b>Total</b>	<b>352</b>	<b>130</b>	<b>20</b>	<b>2</b>	<b>1</b>	<b>19</b>	<b>524</b>
You would recommend this program to others? <i>Bal. Fwd.</i>							
	<b>912</b>	<b>471</b>	<b>188</b>	<b>67</b>	<b>33</b>	<b>8</b>	<b>1679</b>
01/01/11 - 06-30/11	35	4	1	0	0	0	40
07/01/11 - 12/30/11							
<b>Total</b>	<b>947</b>	<b>475</b>	<b>189</b>	<b>67</b>	<b>33</b>	<b>8</b>	<b>1719</b>

Survey Response

**New York**

2<sup>nd</sup> Judicial Department

State Appellate Mediation Program Survey

1. The Civil Appeals Management Program (CAMP), was initiated in 1974. It is one of the oldest settlement programs in the country.
2. Court Rule 22 NYCRR §670.4(b)
3. Conferences are mandated by the Appellate Division rules. A Notice of Conference is mailed to all parties involved in the underlying court cases when that appeal is chosen by the CAMP administrator for mediation. On occasion, parties whose appeal was not initially chosen for mediation, will contact our office to request that a conference be scheduled.
4. 1974
5. 11,980 cases were opened in the Appellate Division, Second Department, in 2011. This includes all matters. Statistics pertaining to civil cases only are not available.
6. Whether an appeal is selected for a settlement conference is based upon a review of the paperwork filed in each case, to wit, the notice(s) of appeal, the *Request for Appellate Division Intervention* (RADI) form, a copy of the order or judgment being appealed, and a copy of the decision, if any.  
The first criterion is whether there is a possibility of resolving (or at least limiting) the issue(s) to be raised on appeal based upon the nature of the relief sought and an analysis of the law as it pertains to those issues. With respect thereto, conferences are scheduled in cases involving appeals from intermediate orders, including those related to examinations before trial and other disclosure matters, disputes as to venue, and controversies concerning bills of particulars. Since appeals involving such issues are taken early in the discovery process, it is usually premature to be able to settle the entire case. However, some of them are settled at the conferences nonetheless.  
The other criterion is whether it is possible to negotiate a final resolution, whether of a monetary or non-economic nature, that would be acceptable to all parties involved in the pending litigation. Such settlements usually occur at a later stage in the litigation after discovery has been completed. It should also be noted that some cases are settled for an amount that would save the litigants the costs of pursuing an appeal to its conclusion.
7. In 2011, 2,745 cases were scheduled for a settlement conference. Out of those, 50% were withdrawn. However, not all cases were withdrawn after a conference was held. 19% of cases scheduled for a conference were withdrawn before a conference could be held, 31% of cases were withdrawn after a conference was held. Several conferences were cancelled for various reasons.
8. 1,951 cases were conferenced during 2011. 841 cases or 43% settled during the conference.

9. While our office does not use the words "partial settlement," there have been numerous conferences handled in which several appeals have been filed by the parties; one part of the case may be settled by some of the parties and that particular party's appeal is withdrawn; the other parties will continue to pursue their appeal by perfecting it and awaiting a decision from the Appellate Division bench.
10. Rarely. Only about 1% of cases are conferenced with self-represented parties. These cases usually involve matrimonial issues.
11. 3 Special Referees who are retired judges of the Appellate Division, Second Department; 1 attorney who is the Administrator of the program
12. The Special Referees are retired Judges of the Appellate Division, Second Department
13. The Special Referees are selected and/or appointed by the Presiding Justice of the Appellate Division, Second Department.
14. Cases are assigned to one Special Referee who then conducts the conference.
15. The Special Referees review the appeals and lower court's decision prior to the conference date. They mandate that the handling attorney with the client and/or claims representative attend the conference. One of the Special referees is assigned appeals relating to matrimonial issues and discovery matters. During the conference, there is a candid and confidential discussion as to the facts and legal issues involved in the case in accordance with the prevailing case law. The Special Referee attempts to have the parties resolve the matter amicably by either settling the underlying court cases for a monetary amount accepted by the plaintiff and/or by having the appeal withdrawn whereby the case continues to a resolution in the lower court.
16. The Administrator reviews all appeals that have been forwarded from the Appellate Division's clerk's office. The Administrator then selects appeals that are to be scheduled for a conference. The clerks schedule a conference with a particular judge for a particular case by sending out a notice of conference to all parties who are involved in the lower court case. Confirmation calls are made to the parties a week prior to the conference date to remind them of the upcoming conference. Questions relating to the conferences are directed to both the Administrator and the clerks. The clerks work with each particular Special Referee to advise when all parties have checked-in for a conference; on occasion, phone calls are made to a particular office to ascertain the whereabouts of a particular attorney who has failed to show timely for the conference. Following the completion of each Special Referee's calendar for a particular day, the clerks enter information as to adjourned dates and status dates into the computer file. If a case cannot be resolved, the case is then remanded whereby the parties must perfect their appeal.
17. We do not keep such data.

26. Conferences are held once a notice of appeal is filed, but usually before the appeal is perfected. If the conferences are successful and the Appellants withdraw the appeals, the program eases the workload of the court. Cases which would have been perfected but are withdrawn after a conference save the Appellate Division judges and their personnel time and work since the Court does not have to take any further action on these appeals other than issuing an order based on the withdrawal.
27. See attached.
28. The program has never been evaluated.

Mediation Program Name: Civil Appeals Management Program (CAMP)

Court: Supreme Court of the State of New York, Appellate Division 2<sup>nd</sup> Judicial Dept.

Court Case Jurisdiction: Orders, Judgment and Decrees in civil cases originating in the Supreme Court, Surrogate's Court, and Court of Claims.

Court Geographic Jurisdictions: Counties of Richmond, Kings, Queens, Nassau, Suffolk, Westchester, Dutchess, Orange, Rockland, and Putnam (Downstate New York, New York City Region)

Name of Mediation Program Director/Administrator: Anne D. Pope, Esq.

Address: 335 Adams Street, Suite 2401, Brooklyn, NY 11201

Telephone: (718) 923-6386

Email: [apope@courts.state.ny.us](mailto:apope@courts.state.ny.us)

Website: [www.nycourts.gov/couts/ad2/](http://www.nycourts.gov/couts/ad2/)

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: Jan. 26 2012

Name: Anne D. Pope

Signature: Anne D. Pope

Title: Administrative  
Civil Appeals Management  
Program

(b) Where an appeal is taken in a criminal action, the notice of appeal shall be filed by the appellant in duplicate in the office in which the judgment or order of the court of original instance is filed. Thereupon the clerk of the court of original instance shall endorse the filing date upon such instruments, shall execute a Request for Appellate Division Intervention - Criminal (Form D) and shall transmit it together with the duplicate notice of appeal to the clerk of this court.

(c) In any case in which an order is made transferring a proceeding to this court, the petitioner shall file forthwith in the office of the clerk of this court two copies of such order, to each of which shall be affixed a copy of a Request for Appellate Division Intervention - Civil (Form A) and a copy of any opinion or decision by the transferring court.

(d) A Request for Appellate Division Intervention - Attorney Matters (Form E) shall be filed in connection with attorney disciplinary proceedings instituted in this court and applications made to this court pursuant to sections 690.17 and 690.19 of the rules of this court.

(e) In all other actions or proceedings instituted in this court, and applications pursuant to CPLR 5704, a Request for Appellate Division Intervention - Civil (Form A) shall be filed.

#### **§ 670.4 Management of Causes.**

(a) *Active Management.*

(1) The court may, in the exercise of discretion, direct that the prosecution of any cause or class of causes be actively managed.

(2) The clerk shall issue a scheduling order or orders directing the parties to a cause assigned to the active management program to take specified action to expedite the prosecution thereof, including but not limited to the ordering of the transcript of the proceedings and the filing of proof of payment therefor, the making of motions, the perfection of the cause, and the filing of briefs. Notwithstanding any of the time limitations set forth in this part, a scheduling order shall set forth the date or dates on or before which such specified action shall be taken.

(3) If any party shall establish good cause why there cannot be compliance with the provisions of a scheduling order, the clerk may amend the same consistent with the objective of insuring expedited prosecution of the cause. An application to amend a scheduling order shall be made by letter, addressed to the clerk, with a copy to the other parties to the cause. The determination of the clerk in amending or declining to amend a scheduling order shall be reviewable by motion to the court on notice pursuant to section 670.5 of this Part.

(4) No filing directed by a scheduling order shall be permitted after the time to do so has expired unless the order is amended in accordance with paragraph (3) of subdivision (a) of this section.

(5) Upon the default of any party in complying with the provisions of a scheduling order, the clerk shall issue an order to show cause, on seven days notice, why the cause should not be dismissed or such other sanction be imposed as the court may deem appropriate.

(b) *Civil Appeals Management Program.*

(1) The court, in those cases in which it deems it appropriate, will issue a notice directing the attorneys for the parties and/or the parties themselves to attend a pre-argument conference before a designated Justice of this court or such other person as it may designate, to consider the possibility of settlement, the limitation of the issues, and any other matters which the designated Justice or other person determines may aid in the disposition of the appeal or proceeding.

(2) Any attorney or party who, without good cause shown, fails to appear for a regularly scheduled pre-argument conference, or who fails to comply with the terms of a stipulation or order entered following a pre-argument conference, shall be subject to the imposition of such costs and/or sanctions as the court may direct.

**§ 670.5 Motions and Proceedings Initiated in this Court – Generally.**

(a) Unless otherwise required by statute, rule, or order of the court or any Justice, every motion and every proceeding initiated in this court shall be made returnable at 9:30 A.M. on any Friday. Cross motions shall be made returnable on the same day as the original motion and shall be served and filed at least three days before the return date. Motions shall be on notice prescribed by CPLR 2214 and CPLR article 78 proceedings shall be on notice prescribed by CPLR 7804(c).

(b) All motions and proceedings initiated by notice of motion or notice of petition, shall be filed with the clerk at least one week before the return date. All papers in opposition shall be filed with the clerk before 4 P.M. of the business day preceding the return date. All papers in opposition to any motion or proceeding initiated in this court by an order to show cause shall be filed with the clerk on or before 9:30 A.M. of the return date, and shall be served by a method calculated to place the movant and other parties to the motion in receipt thereof on or before that time. The originals of all such papers shall be filed. On the return date the motion or proceeding will be deemed submitted to the court without oral argument. Counsel will not be required to attend and a note of issue need not be filed.

(c) Every notice, petition, or order to show cause instituting a motion or proceeding must state, *inter alia*:

- (1) the nature of the motion or proceeding;
- (2) the specific relief sought;
- (3) the return date; and
- (4) the names, addresses, and telephone numbers of the attorneys and counsel for all parties in support of and in opposition to the motion or proceeding.

(d) The papers in support of every motion or proceeding must contain a copy of:

- (1) the order, judgment, or determination sought to be reviewed and the decision, if any; and
- (2) the notice of appeal or other paper which first invoked the jurisdiction of this court.

Survey Response:  
New York  
3<sup>rd</sup> Judicial  
Department

## STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established?

December 15, 1997

2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?

The Civil Appeals Settlement Program (CASP) was established by amendment of the NYS Supreme Court Appellate Division Third Department's Rules of Practice adding sections 800.24-a and 800.24-b (22 NYCRR 800.24-a & 800.25-b) [see attached].

3. Are mediations ordered by the court or is mediation an optional service provided upon request?

For those cases that are selected, participation in the program is mandatory, however, cases may be adjourned or cancelled for good cause shown. Likewise, cases that are not selected for the program may be admitted to the program upon good cause shown [see attached].

4. When did the program begin conducting mediations?

February 1, 1998

5. How many civil appeals are administered by your court annually? 1,347

6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.

The appellant is required to submit a pre-calendar statement [attached] which is reviewed by the administrators to determine whether the matter is appropriate for a settlement conference. Factors considered include the nature of the case, the procedural posture of the action, the relief sought in the matter, nature of the order or judgment under appeal, the number and location of attorneys and parties, an analysis of the court's decision being appealed and the availability of issues which can be compromised.

7. How many cases were mediated in the most recent year? 370

8. How many cases settled in mediation in the most recent year? 122

Full settlements \_\_\_\_\_ Partial settlements \_\_\_\_\_

The program does not keep statistics as to whether the settlements are "full" or "partial", but the vast majority of cases resolved at CASP result in full settlement of the entire action.

9. How does your program define a "partial settlement?"

A "partial settlement" would involve a conference that resulted in the appeal being withdrawn, but the underlying litigation continuing.

10. Does your program offer mediation in cases with self-represented parties?

Yes.

If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Although CASP does not track this statistic, I would estimate that approximately 8 - 10 % have at least one self-represented party. Does your program employ different policies or screening in cases involving self-represented parties? When the matter involves pro se litigants, CASP makes every effort to determine whether the self-represented party understands the nature of the program and is capable of compromising his or her position in the litigation.

10. Who serves as mediators in your program? How many of such mediators are currently active in your program?

CASP currently has eleven active settlement officers, nine of whom are retired judges. Two are retired attorneys who are well-respected in the legal community.

12. What are the required qualifications for appellate mediators in your program?

While there are no specific qualifications, our appellate mediators have substantial experience in civil litigation and mediation.

13. How are mediators selected or designated for a particular case?

The assignment of cases to a Settlement Officer is determined primarily by geography. CASP holds conferences at one of eight sites within the Third Department. Cases are assigned to a particular location after taking into consideration where the matter is venued, together with the location of the attorneys and parties. Each of the sites is served by one settlement officer who resides near that location with the exception of two locations that are served by multiple Settlement Officers, in which case, the matters are assigned based on areas of expertise and complexity.

14. Are your cases mediated by one mediator or are they co-mediated?

CASP conferences are presided over by one Settlement Officer. However, on occasion, an administrator may attend conferences and participate in the settlement process, if appropriate.

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

A variety of approaches are used depending on the particular style of the Settlement Officer presiding. The typical conference starts with only the attorneys (pro se litigants are treated as counsel). The attorneys are permitted to express their position concerning the case and the appeal with the Settlement Officer asking questions and making observations. The discussion is then brought to the topic of settlement. At some point the Settlement Officer will

listen to and talk with just the appellant's attorney. Then the Settlement Officer will separately listen to and discuss the action with each unallied grouping of opposing counsel. When appropriate, clients sit in with their attorney. With give and take and negotiations under the guidance of the Settlement Officer, the conference continues until the matter settles or it becomes apparent that no settlement is possible. If settlement progress is made, but an agreement was not reached, the matter might be rescheduled for a voluntary follow up conference, made subject to a status report by counsel or a follow up inquiry by CASP.

Whether or not a case is settled at a CASP conference, participants in conferences have advised us that the program has been integral in helping participants objectively evaluate the strengths and weaknesses of their cases; generating new ideas and options for settlement; overcoming obstacles and impasses; reducing tensions between participants; dealing with procedural problems; and eliminating and/or clarifying issues.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

The Presiding Justice of the Court appoints the Settlement Officers to the program and is responsible for policy decisions relating to CASP. The CASP Administrator, an attorney, is responsible for selecting cases for conference and managing the daily operation of the program. The Clerk of the Court supervises the administration of the program by the administrator. However, it should be noted that CASP operates confidentially and independently from the Court and if a case does not resolve with CASP, the Court is not advised that the matter has been conferenced.

17. What is the annual cost of the program?

The annual cost of the Settlement Officers is \$35,000 - \$40,000. The annual for cost for the administration of CASP is approximately \$130,000.

18. How many staff persons assist in the management and administration of your appellate mediation program?

Three staff members are involved in the administration of the program, two of whom have other responsibilities within the Court, unrelated to the CASP program.

How many of such persons, if any, also serve as mediators in your program?

None of the administrative staff serves as a Settlement Officer.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Attorneys may be permitted to opt out of the program. Please describe the grounds permitted to opt-out.

Attorneys may "opt-out" of the mediation if they can demonstrate a valid reason why the matter cannot be compromised or why an appellate decision is necessary to resolve a particular issue. Clients are also required to attend the conference, but may be excused where appropriate for hardship reasons, such as poor health or significant distances necessary to be traveled to attend the conference.

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons arising from the mediation process? If so, have such sanctions been imposed? Please describe.  
Pursuant to 22 NYCRR 800.24-b (b) [attached] sanctions are authorized, but have rarely been imposed.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

1) <u>Torts</u>	30 %
2) <u>Breach of Contract</u>	17 %
3) <u>Child Support /Custody/Visitation</u>	13 %
4) <u>Matrimonial</u>	12 %
5) <u>Estate</u>	12 %
6) <u>Foreclosure</u>	8 %
7) <u>Misc.</u>	8 %

If you are able to provide settlement statistics per case type, please do so.

22. What types of civil cases, if any, are ineligible for mediation in your program?

Matters specifically excluded from CASP include administrative law (CPLR article 78) proceedings, habeas corpus matters, appeals in Family Court involving child abuse or neglect, juvenile delinquency or persons in need of supervision, and Election Law proceedings as well as appeals from the Unemployment Insurance Appeal Board and the Workers' Compensation Board.

Other civil matters pragmatically not considered for a settlement conference are those where the lower court's decision/order involves matters which cannot be modified by the parties' agreement without the Court's consent such as sanctions or contempt rulings.

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

A change in administration, together with a significant budget reduction, has resulted in some modifications to the program which have improved the program's overall efficiency without compromising its success rate.

24. What do you rate as the most significant successes of your appellate mediation program to date?

The program's most significant achievement lies in its success in facilitating global settlements of entire actions, particularly when they involve interlocutory appeals which not

only results in the removal of the case from the Appellate Division docket, but also from the docket of the trial court from which the appeal is taken.

While many cases may eventually settle prior to trial regardless of the intervention of CASP, participants in the program have routinely express gratitude for the intervention of CASP as a neutral catalyst for the initiation of settlement discussions at an earlier stage of the litigation than may otherwise have occurred. This intervention saves litigants time and minimizes their expenditure of both monetary and emotional resources, while also lessening the caseload burden on judicial resources at both the appellate and trial level. Participants with CASP have informed us that the mere scheduling of a conference causes them to evaluate settlement of the matter and also provides an opportunity to approach their adversary at the direction of CASP as a neutral catalyst for settlement discussions without one party appearing weak by initiating such discussions on their own. Each year approximately 100 appeals are settled and/or the appeal withdrawn prior to a scheduled conference.

During this time of reduced financial resources, CASP is able to intervene in many domestic relations matters where counsel has been assigned to represent both the litigants and the children. It is estimated, that when such matters are resolved through the intervention of CASP approximately \$7,500 of public funds per case are saved when the appeal is not perfected. We estimate that approximately 10 such cases are settled annually. Also, as a result of the current economic climate, many attorneys have advised us that they are more frequently employing the services of professional arbitrators and mediators to avoid the expense and uncertainty of trial. For the relatively small expenditure of the program to the public, the litigants receive the benefit of experienced mediators and an outcome that is reached by compromise rather than a determination by a court and the court system receives the benefit of a reduced caseload.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

CASP is designed to serve the litigants and the legal community in resolving matters expeditiously. One challenge facing the program is how to better educate the bar with respect to the value and function of mediation. I believe that CASP could be even more effective in resolving matters if attorneys were better prepared to participate in settlement discussions and were also better able to manage the reasonable expectations of their clients.

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

As a result of each of the more than 120 settlements reached annually due to the intervention by CASP, there is a significant reduction to the workload of the court and the use of judicial resources. When a matter is settled, the Clerk's Office does not need to process any correspondence relating to that matter or calendar the case; the law research department is not required to review, research and prepare a preliminary report for the court; the judges' law clerks

do not need to read the appellate briefs and record, conduct legal research and prepare a proposed decision; five appellate justices will not have to review the matter, hear oral argument, prepare a decision and conference the matter. Also, in the overwhelming majority of cases where a global settlement of the matter has been reached, CASP has a similar impact on the workload of the lower courts since most cases are remanded to the lower court after a decision by the appellate court has been issued.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

Attached please find an overview of the program, together with copies of 22 NYCRR 800.24-a & 800.24-b, a pre-calendar statement, instructions to counsel and a sample notice of conference.

28. Has your program been evaluated? If so, could you share the results of the evaluation?

To my knowledge, the program has never been formally evaluated. However, we do provide evaluation forms to participants and the feedback received from those evaluations has been utilized to implement changes and improvements to the program.

Mediation Program Name: Civil Appeals Settlement Program (CASP)

Court: NYS Supreme Court, Appellate Division, Third Department

Court Case Jurisdiction: The Appellate Division is New York State's intermediate level appellate court. It hears appeals from trial courts and has power to review both law and facts in civil and criminal cases.

Court Geographic Jurisdiction: The Appellate Division, Third Department, which is located in Albany, is one of four Appellate Division Departments. Each Department exercises appellate jurisdiction in a separate geographic region. The Third Department is comprised of 28 counties which include just over half of New York's land area and contains about one seventh of the State's population.

Name of Mediation Program Director/Administrator: Timothy P. O'Keefe, Esq.

Address: P.O. Box 7349, Capitol Station, Albany, NY 12224-0349

Telephone: (518) 471-4833

Email: AD3CASPOffice@courts.state.ny.us

Website: <http://www.nycourts.gov/ad3/casp>

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1/30/12

Timothy P. O'Keefe  
Name

Timothy P. O'Keefe  
Signature

CASP Administrator  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.



009717

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

April 12, 2011

**By Hand Delivery**

Timothy P. O'Keefe  
CASP Administrator  
Third Judicial Department  
Civil Appeals Settlement Program  
P.O. Box 7349, Capitol Station  
Albany, NY 12224-0349

Re:

Supreme Court, Appellate Division, Third Department, Case No.

Dear Mr. O'Keefe:

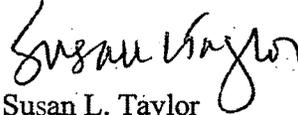
I write on behalf of both parties to the above-referenced proceeding. The proceeding involves a challenge to a determination of the Commissioner of the New York State Department of Environmental Conservation, finding petitioners Robert Carney and Carney's Restaurant, Inc. (Restaurant) liable for violations of State environmental laws and regulations and a permit issued pursuant to the State Pollution Discharge Elimination System (SPDES). In the challenged determination, the Commissioner found petitioners liable for violations and imposed penalties both jointly and severally, and also individually against the Restaurant.

Supreme Court (Giardino, J.) transferred the proceeding because it turns on substantial evidence and there is no objection in point of law that could terminate the entire proceeding. The State counterclaimed for enforcement and also for judgment on two counterclaims that turn on evidence not in the administrative record. Judge Giardino severed and retained the latter two counterclaims, which will be resolved following the Third Department's determination on the petition and three transferred counterclaims.

The parties have engaged in settlement negotiations over several months. Although we have narrowed the issues and come relatively close to an agreement, we think it would be useful to have the Court help us complete our settlement talks. A settlement in this matter would also resolve the counterclaims still pending on Judge Giardino's docket. The State's brief in the matter is currently due on July 8, 2011 (any appeal will be heard during the September term). We respectfully ask that you admit us to the CASP program.

Thank you for your courtesy and consideration.

Respectfully,

A handwritten signature in cursive script that reads "Susan L. Taylor".

Susan L. Taylor  
Assistant Attorney General  
518-474-2432

## Section 800.24-a Pre-calendar Statement for Civil Appeals

(a) In every civil case in which a notice of appeal is filed or an order granting leave to appeal is entered, except in appeals in proceedings pursuant to the Election Law and CPLR articles 70 and 78, appeals in family court proceedings involving child abuse or neglect, juvenile delinquency or persons in need of supervision, appeals from decisions of the Unemployment Insurance Appeal Board and Workers' Compensation Board, and appeals pursuant to section 168-n (subd. 3) of the Correction Law, appellant shall also file, together with the notice of appeal or order granting leave to appeal, a pre-calendar statement.

(b) The pre-calendar statement, entitled as same, must set forth:

- (1) The title of the underlying action or proceeding and the date of commencement;
- (2) The full names of the original parties and any change in the parties;
- (3) The name, address, telephone number and facsimile telephone number of counsel for appellant;
- (4) The name, address, telephone number and facsimile telephone number of counsel for each respondent and counsel for each other party;
- (5) The court, judge or justice, and county from which the appeal is taken, together with the index number and the request for judicial intervention (RJI) number;
- (6) The specific nature and object of the underlying action or proceeding (e.g., automobile negligence personal injury action seeking money damages; breach of contract action seeking specific performance; family court proceeding seeking modification of child custody and visitation order; divorce action involving equitable distribution; real property action involving a boundary-line dispute and adverse possession);
- (7) A clear and concise statement of the issues to be raised on the appeal and the grounds for reversal or modification to be advanced;
- (8) Whether there is another pending appeal or pending related action or proceeding, briefly describing same.

(c) Appellant shall attach to the pre-calendar statement a copy of the order or judgment appealed from, the opinion or decision, if any, and a copy of the notice of appeal or order granting leave to appeal.

(d) The clerk of the court from which the appeal is taken shall promptly transmit the pre-calendar statement and its attachments to the Appellate Division, Third Department.

(e) Forms. The pre-calendar statement shall read substantially as follows:

### PRE-CALENDAR STATEMENT

State of New York  
Supreme Court - Appellate Division  
Third Judicial Department

---

Case Title: Set forth the full case title.

County Index No. \_\_\_\_\_  
RJI No. \_\_\_\_\_  
Date of Commencement \_\_\_\_\_

**Parties Involved:** Set forth the full names of the original parties and any change in parties.

Party Name	Original Status	Appellate Status
(eg. John Doe)	(eg. Defendant)	(eg. Appellant)

**Counsel for Appellant(s):** Set forth the name, address, telephone number and facsimile telephone number for appellant(s).

**Counsel for Respondent(s) and Counsel for Other Parties:** Set forth the name, address, telephone number and facsimile telephone number of counsel for respondent(s) and for each other party.

**Court, Judge and County:** Identify the court, judge or justice, and the county from which the appeal is taken.

**Nature and Object of Action or Proceeding:** Concisely set forth the nature and object of the underlying action or proceeding.

**Appellate Issue(s):** Set forth a clear and concise statement of the issue(s) to be raised on the appeal, the grounds for reversal or modification to be advanced and the specific relief sought on the appeal.

**Other Related Matters:** Indicate if there is another related action or proceeding, identifying and briefly describing the same.

Submitted by:

\_\_\_\_\_  
Signature

Print Name:  
Attorney for:  
Date:

Attachments:

1. Copy of order or judgment appealed from.

Check

\_\_\_\_\_ attached

2. Copy of opinion or decision.

\_\_\_\_\_ attached

3. Copy of notice of appeal or order granting leave to appeal.

\_\_\_\_\_ does not exist

\_\_\_\_\_ attached

Attach copies, not originals. File this original form with attachments when original notice of appeal is filed in the court office where the judgment or order of court of original instance is entered. A copy of this document must be served on counsel and pro se parties.

### **Section 800.24-b Civil Appeals Settlement Program**

(a) The court, in those cases in which it deems it appropriate, will issue a notice directing the attorneys for the parties and the parties themselves (unless the court excuses a party's personal presence) to attend a pre-calendar conference before such person as it may designate to consider settlement, the limitation of issues and any other matter which such person determines may aid in the disposition of the appeal or resolution of the action or proceeding. Where parties are represented by counsel, only attorneys fully familiar with the action or proceeding, and authorized to make binding stipulations or commitments, or accompanied by a person empowered to act on behalf of the party represented, shall appear at the conference.

(b) Any attorney or party who, without good cause shown, fails to appear for or participate, with the familiarity and authorization described in subdivision (a) of this section, in a regularly scheduled pre-calendar conference, or who fails to comply with the terms of a stipulation or order entered following a pre-calendar conference, may be subject to such sanctions and/or to such costs in the form of reimbursement for actual expenses incurred and reasonable attorneys' fees as the court may direct.

(c) Should a pre-calendar conference not be scheduled within 30 days after the filing of a pre-calendar statement, any party may, upon notice, apply to the court by letter requesting such conference. The application shall include a brief statement indicating why a conference would be appropriate.

**PRE-CALENDAR STATEMENT**  
*State of New York*  
**Supreme Court - Appellate Division**  
*Third Judicial Department*

---

**Case Title:**                      Set forth the full case title.

County Index No. \_\_\_\_\_  
RJI No. \_\_\_\_\_  
Date of Commencement \_\_\_\_\_

---

**Parties Involved:**                      Set forth the full names of the original parties and any change in the parties.

**Party Name**  
(eg. John E. Doe)

**Original Status**  
(eg. Defendant)

**Appellate Status**  
(eg. Appellant)

**Counsel for Appellant(s):**                      Set forth the name, address, telephone number and facsimile telephone number of counsel for appellant(s).

**Counsel for Respondent(s) and Counsel for Other Parties:**                      Set forth the name, address, telephone number and facsimile telephone number of counsel for respondent(s) and for each other party.

**Court, Judge and County:**                      Identify the court, judge or justice, and the county from which the appeal is taken.

**Nature and Object of Action or Proceeding:**

Concisely set forth the nature and object of the underlying action or proceeding.

**Appellate Issue(s):**

Set forth a clear and concise statement of the issue(s) to be raised on the appeal, the grounds for reversal or modification to be advanced and the specific relief sought on the appeal.

**Other Related Matters:**

Indicate if there is another action or proceeding, identifying and briefly describing the same.

Submitted by:

\_\_\_\_\_  
Signature

Print name:  
Attorney for:  
Date:

-----  
**Attachments:**

**Check**

- |    |   |                                    |
|----|---|------------------------------------|
| 1. | Copy of order or judgement appealed from.                   | ___ attached                       |
| 2. | Copy of opinion or decision.                                | ___ attached<br>___ does not exist |
| 3. | Copy of notice of appeal or order granting leave to appeal. | ___ attached                       |

Attach copies, not originals. File this original form with attachments when notice of appeal is filed the office where the judgement or order of court or original instance is entered.  
A copy of this document must be served on all counsel and pro se parties.



State of New York  
Supreme Court, Appellate Division  
Third Judicial Department  
Civil Appeals Settlement Program  
P.O. Box 7349, Capitol Station  
Albany, NY 12224-0349

Robert D. Mayberger  
Clerk of the Court

(518) 471-4833  
fax: (518)-471-4758  
<http://www.nycourts.gov/ad3/casp>

Timothy P. O'Keefe  
CASP Administrator

Fax No.: (518) 471-4758

**Notice of Conference**

William J. Doe, Esq.  
Gold & Doe  
38 South Street, Suite 200  
Albany, NY 12211

John A. Roe, Esq.  
Dewey Settlum & Howe  
310 Northern Ave.  
Albany, NY 12204

Re: CASP # 0091234 Smith v Jones

A Civil Appeals Settlement Program conference on the above referenced matter is scheduled as follows:

Settlement Officer:

Hon. Donald D. DeAngelis

**Location:**

Appellate Division  
Empire State Plaza, Justice Bldg.  
**State Street, West End, Platform Level**  
Albany, New York 12223

Date & Time:

Wednesday, August 18, 2011 at 10:00 AM

- ① Attorneys must be fully prepared. Client attendance is mandated.
- ② Adjournment procedure is strictly enforced.
- ③ Submission of a case statement is highly recommended.
- ④ If you no longer represent the party, immediately inform CASP.

**Read Instructions to Counsel**

July 20, 2011

**CIVIL APPEALS SETTLEMENT PROGRAM  
SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT  
INSTRUCTIONS TO COUNSEL**

Please note that the enclosed Notice of Conference directs you to appear at a conference as part of this Court's Civil Appeals Settlement Program (CASP). The purpose of the conference is to facilitate settlement of the appeal, to limit the issues, or to resolve the entire action or proceeding (see 22 NYCRR 800.24-b, subd. [a]).

Your attention is called to the following instructions.

① Appearance of Counsel and Attendance of Client: All counsel must appear with the client even if the client will not be affected by the appeal, since the conference will explore settlement of all aspects of the litigation. Only attorneys fully familiar with the facts and issues of the case are to attend the conference. Client participation in the negotiations is essential to maximize the possibility of a comprehensive resolution of the matter. Please examine, in good faith, the objectives of the action and all reasonable compromises and settlement possibilities. Attendance of a client is excused only upon extraordinary grounds, and applications for same must be promptly made to the CASP Administrator. Requests to excuse the presence of the client are not considered approved unless specifically granted. If the client's presence is excused, counsel must obtain authority to settle the matter.

② Adjournments: Adjournments may be granted only by permission of the Court. A written request, specifying the reason, must be made not more than eight days subsequent to receipt of the Notice of Conference and shall be directed to the CASP Administrator at the following address:

Timothy P. O'Keefe, Esq., CASP Administrator, Civil Appeals Settlement Program  
P.O. Box 7349, Capitol Station, Albany, New York 12224  
Telephone: (518) 471-4833, Fax: 518-471-4758

**Last minute requests for adjournments, except for emergencies, will not be considered.**

Emergency requests must be promptly made by telephone or fax directly to the CASP Administrator.

③ Case Statement: To facilitate settlement discussions, it is highly recommended that counsel submit a case statement describing the action and its merits, providing counsel's assessment of the relevant issues and facts, including appellate issues, and providing any other information which would assist in resolution of all or part of the action. Submission should be promptly made (**at least 10 days prior to the conference**) and sent directly to the CASP office; a copy being sent to opposing counsel. While not mandated, **case statements are strongly encouraged**. It may be faxed.

④ Representation: If you have received a Notice of Conference and no longer represent a party, you must inform the CASP Administrator immediately; you must also provide CASP with a current address at which the party may be contacted and an indication that you have forwarded the notice to the party. If you note that an attorney properly part of the action subject to the appeal has not been noticed for the conference, please advise the CASP office.

⑤ Confidential Nature of Conference: The progress of and communications in matters in CASP may not be shared with the court as part of the appeal and play no role in the court's resolution of an appeal. The communications and opinions expressed at a CASP conference are confidential and may not be communicated to the court as part of the merits of an appeal.

**All communications are to be directed to the Civil Appeals Settlement Program.**

The consideration of an appellate matter by CASP does not excuse compliance with any Third Department rule concerning the timely perfection of the appeal.

**Civil Appeals Settlement Program  
Supreme Court, Appellate Division, Third Judicial Department**

**ATTENDANCE OF INSURANCE ADJUSTERS AT CASP CONFERENCES**

Since the insurance company is deemed to be the real party in interest where the company is defending and indemnifying a party, it is the general policy of the Third Department's settlement program that insurance adjusters must attend the settlement conferences. **In the situation where the named party is fully defended and indemnified, and the Insurance Company controls the litigation and all settlement issues, the named party is not required to attend the CASP conference.**

If attendance at the conference presents a significant difficulty for the adjuster, the adjuster may be excused upon meeting the following conditions:

1) Counsel for the insured party must discuss and review with the adjuster the entire litigation, fairly assessing the strengths and weaknesses of the case. Counsel and the adjuster must examine, in good faith, the objectives of the action and all reasonable compromises and settlement possibilities.

2) For at least one hour commencing at the conference's scheduled starting time, the adjuster must remain available by telephone to discuss possible settlement options. The adjuster must agree, in good faith, to reasonably consider any recommendations made by counsel or proposals suggested by the Settlement Officer.

3) Counsel must appear at the conference with full and binding authority to resolve the matter within the parameters agreed upon with the adjuster.

4) Counsel must sign and return to the CASP office, prior to the conference, the acknowledgment of these conditions which appears at the bottom of this form. The form may be faxed to (518) 471-4758.

If there are any questions, please contact the CASP Administrator at (518) 471-4833

Clip and Return to CASP

Clip and Return to CASP

Acknowledgment of Conditions Excusing Attendance of Insurance Adjuster

Short Title \_\_\_\_\_, CASP # \_\_\_\_\_, Conference Date \_\_\_\_\_

Reason for adjuster's unavailability \_\_\_\_\_

Adjuster's name \_\_\_\_\_, Insurance Co. \_\_\_\_\_

Adjuster's Telephone # \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney's signature

Attorney's Name: \_\_\_\_\_

# Civil Appeals Settlement Program of the Appellate Division Third Department

## Introduction

The Civil Appeals Settlement Program has its origins in the successful appellate settlement programs of the Appellate Division Second Department and the Second Circuit Court of Appeals. The Third Department established the Civil Appeals Settlement Program (commonly referred to as CASP) effective December 15, 1997 with the amendment of the Third Department's Rules of Practice adding sections 800.24-a and 800.24-b (22 NYCRR 800.24-a & 800.24-b). The purpose of the program is to bring counsel and the parties together in an effort to resolve their dispute (in whole or in part) by agreement prior to the appeal being perfected. The setting is neutral and is presided over by an experienced mediator. The Civil Appeals Settlement Program is limited to civil appeals.

## The Pre-calendar Statement

Most civil appeals to the Appellate Division Third Department require the filing of a Pre-calendar Statement. Several categories of civil matters are specifically excluded from the program including CPLR article 78 proceedings, habeas corpus matters, appeals in Family Court proceedings involving child abuse or neglect, juvenile delinquency or persons in need of supervision, and Election Law proceedings as well as appeals from the Unemployment Insurance Appeal Board and the Workers' Compensation Board. The Pre-calendar Statement filing requirement does not apply to these matters. Other civil matters pragmatically not considered for a settlement conference are those where the court's decision/order involves matters which can not be modified by the parties' agreement without the court's consent such as sanctions determinations or contempt of court rulings.

The Pre-calendar Statement is a key element of the Civil Appeals Settlement Program. A copy of the Pre-calendar Statement form is attached, the contents of which are set by 22 NYCRR 800.24-a (b). The Pre-calendar Statement is the form which alerts the Civil Appeals Settlement Program of the existence of the appeal and provides the settlement program with the basic information concerning the action and appeal. The Pre-calendar Statement identifies the parties, the attorneys, the court of origin, the nature of the action, the appellate issues and any related action or appeal. Together with the attachments required by the regulation (i.e., the order or judgment under appeal, the underlying court decision, and the notice of appeal), the Pre-calendar Statement forms the basis of the settlement program's determination whether or not to schedule a settlement conference in the matter.

The Pre-calendar Statement is completed and filed with the Notice of Appeal. It is then transmitted by the county clerk (or court clerk) to the Civil Appeals Settlement Program. Upon

its receipt by CASP, the Pre-calendar Statement is reviewed for appropriateness for a settlement conference. If it is incomplete or missing its attachments, the submitting attorney is contacted and requested to remedy the situation. Some county and court clerks forward notices of appeal even where no Pre-calendar Statement has been filed. Again, the attorney is contacted, provided with a form and requested to make the required filing. While Pre-calendar Statements have not been determined to be jurisdictional to the underlying appeal, the filing of the statement is mandatory.

#### Conference Selection

Within a week of its receipt by the program, the Pre-calendar Statement is reviewed by the Civil Appeals Settlement Program to determine the matter's appropriateness for a settlement conference. There is no magic factor which causes a particular matter to be selected or rejected for purposes of a settlement conference. Factors considered include the nature of the case, the procedural posture of the action, the relief sought in the matter, nature of the order or judgment under appeal, the number and location of attorneys and parties, an analysis of the court's decision being appealed and the availability of issues which can be compromised. If an appeal has not been selected and noticed for a settlement conference within 30 days of the filing of the Pre-calendar Statement, the rule provides that counsel may request a conference with a letter to the Civil Appeals Settlement Program indicating why a conference would be appropriate (22 NYCRR 800.24-b [c]). Selection for a conference remains discretionary.

#### Notice of Conference

If an appeal is selected for a settlement conference, a formal Notice of Conference is mailed to all attorneys in the matter. Generally, the conference is scheduled about three to five weeks from the date of the notice. A sample Notice of Conference is attached. If selected, attendance at the settlement conference is mandatory for all attorneys and parties in the matter (absent being excused), not just those interested in the appellate issues, as the purpose of the conference is to facilitate settlement of the appeal, to limit issues in the matter, or to resolve the entire action or proceeding. It is with the latter item, settlement of the entire action, where the Civil Appeals Settlement Program has had significant success.

Beyond naming the Settlement Officer and providing the date, time and location of the conference, the Notice of Conference refers counsel to the procedural requirements of the Instructions to Counsel which is mailed with the notice. The notice advises the attorneys not to contact the Settlement Officer directly. The reason for the prohibition is that the calendar, especially adjournments, is handled by the program administrator. Settlement Officers do not receive conference materials until several days before the conference date. The notice reminds counsel that compliance with the Third Department's Rules of Practice concerning the timely perfection of the appeal is not excused by participation in a settlement conference.

## Instructions to Counsel

The Instructions to Counsel are the simple rules of the program. A copy of the instructions is attached. The Instructions to Counsel clearly sets forth the basic requirements for a successful settlement conference and may not be disregarded without peril of sanctions (see, 22 NYCRR 800.24-b [b]). The main requirement is 'Appear prepared with client'. Attendance, preparation and client participation are the key ingredients to a successful conference.

Since the possibility of settling the entire case is a significant part of every conference, the attorney for each party to the action must appear, even if the party will not be affected by the outcome of the proceeding before the Appellate Division (see, 22 NYCRR 800.24-b [a]). The Civil Appeal Settlement Program sets aside a block of time for each conference. A failure to appear wastes that time slot and inconveniences all those who do appear. A failure to appear is not tolerated absent good cause shown.

Counsel must know their case. Only attorneys who have knowledge of the facts and the issues and who are fully familiar with the action are permitted to attend a settlement conference. The sending of an associate who does not have familiarity with the case is not permitted (see, 22 NYCRR 800.24-b [a]).

Clients are required to participate in the settlement conference process (see, 22 NYCRR 800.24-b [a]). Client participation in negotiations is essential to maximize the possibility of a comprehensive resolution of the entire matter. Clients should be fully briefed before the conference. Where appropriate for hardship reasons, the attendance of a client may be excused by the CASP administrator. Acceptable excuses include significant distances necessary to be traveled or poor health conditions. However, counsel must meet conditions substantially similar to those discussed below for insurance adjusters

Insurance adjusters are deemed to be the client where the insurance is providing the defense and indemnification in the matter. Insurance adjusters may be excused from personal attendance at the CASP settlement conference only if their offices are far from the conference site subject to the following conditions:

- 1) The adjuster must have the authority to resolve/settle the matter if the adjuster concludes same is advisable.
- 2) Counsel who is attending the CASP conference and the adjuster must fully discuss and review the entire matter, assessing the strengths and weaknesses thereof from their position and that of the other parties.
- 3) Counsel and the adjuster must have agreed upon the parameters in which the matter might settle. In this regard, counsel's professional opinion of the direction

of the matter and possible settlement terms must coincide with the professional opinion of the adjuster. Additionally, the adjuster must, in good faith, agree to keep an open mind to professional recommendations and advice from counsel.

- 4) The adjuster must be available by telephone to discuss the matter with counsel during a one hour period commencing at the time the CASP conference is scheduled to begin, treating such availability as a direct appointment.
- 5) Counsel must appear with full and binding authority to completely resolve the matter at the CASP conference if appropriate to the circumstances.

Adjournment requests must be made to the CASP administrator not later than eight days immediately following receipt of the Notice of Conference. If promptly made, adjournments are liberally granted. Last minute requests for adjournments, unless of an emergency/hardship nature, are not considered absent good cause.

The Instructions to Counsel encourage attorneys to submit a voluntary case statement describing the action and appeal and their position. This statement can be helpful to the Settlement Officer's understanding the action and the positions of the parties, particularly when the decision of the court below is brief.

The instructions also explain that the Civil Appeal Settlement Program is a discrete branch of the Appellate Division and that communication in an open and frank effort to settle are considered confidential in nature and are not shared with the Appellant Division.

#### Settlement Conferences

The Civil Appeals Settlement Program currently has eleven active Settlement Officers, nine of whom are retired judges. Settlement conferences are held at one of eight sites which are located at Albany, Kingston, Monticello, Binghamton, Delhi, Elmira, Canton and Elizabethtown. In scheduling a matter for conference, the location selection process considers where the matter is venued and the location of the attorneys and parties. The Settlement Officers receive their calendar with all the material possessed by the Civil Appeals Settlement Program in time to prepare for the conference. As such material is limited, the Settlement Officers start their mediation function only as a 'warm' bench.

The typical conference starts with only the attorneys (pro se litigants are treated as counsel). The attorneys are permitted to express their position concerning the case and the appeal with the Settlement Officer asking questions and making observations. The discussion is then brought to the topic of settlement. At some point the Settlement Officer will listen to and talk with just the appellant attorney with the other counsel waiting outside the room. Then the Settlement Officer will separately listen to and discuss the action with each unallied grouping of

opposing counsel. When appropriate, clients sit in with their attorney. With give and take and negotiations under the guidance of the Settlement Officer, the conference continues until the matter settles or it becomes apparent that no settlement is possible. If settlement progress is made, but an agreement was not reached, the matter might be rescheduled for a voluntary follow up conference, made subject to a status report by counsel or be subjected to a follow up inquiry by the Civil Appeals Settlement Program.

At the conclusion of the conference, the Settlement Officer reports in general terms to the Civil Appeals Settlement Program as to the status of the matter and the file is appropriately marked. No case specific report is made to the Appellant Division. The only case specific information to reach the court is when a motion for a sanction is made in a rare case as the result of inappropriate conduct. Even then, the contents of the settlement negotiation are not disclosed, only the inappropriate conduct such as failure to appear or a totally unprepared appearance is disclosed. If no agreement is reached, the appeal continues as if there had been no intervention by the Civil Appeals Settlement Program.

#### Conclusion

The CASP process is generally completed within 60 to 90 days from its receipt of the Pre-calendar Statement. The Civil Appeals Settlement Program has scheduled more than 10,000 appeals for conference. Nearly one out of three matters which are actually conferenced either settle or otherwise withdraw their appeal because of the conference. It is noted that there is no way to determine how many of these matters may have settled in any event or would never have resulted in a perfected appeal. Not included in the 1 in 3 statistic are the roughly 100 appeals each year which settle and/or withdraw prior to a scheduled conference.

Survey Response

# North Carolina

STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established? 2002 as pilot program; 2004 as permanent program
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? Court Rule
3. Are mediations ordered by the court or is mediation an optional service provided upon request: Optional
4. When did the program begin conducting mediations: 2003
5. How many civil appeals are administered by your court annually? Approximately 850
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process. Consent of all parties is required. All civil cases except those involving abused/neglected juveniles and parental rights are eligible.
7. How many cases were mediated in the most recent year? 61
8. How many cases settled in mediation in the most recent year? Full settlements: 27
9. How does your program define a "partial settlement?" We do not recognize "partial settlement."
10. Does your program offer mediation in cases with self-represented parties? Yes. If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? 0%. Does your program employ different policies or screening in cases involving self-represented parties? No
11. Who serves as mediators in your program? How many of such mediators are currently active in your program? Active judges, retired judges, private mediators. See "Mediation Instructions" on Court web site.
12. What are the required qualifications for appellate mediators in your program? Completion of mediation course accredited by NC Dispute Resolution Commission.
13. How are mediators selected or designated for a particular case? Active judges assigned on rotating basis. Retired judges and private mediators chosen by parties.
14. Are your cases mediated by one mediator or are they co-mediated. One mediator.
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program. Judge chairs program committee; clerical personnel manage program
17. What is the annual cost of the program? -0-
18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program? 2 staff persons assist in administration, none serve as mediators.
19. If parties are ordered to mediation in your program, are they permitted to "opt out" of mediation? Please describe the grounds permitted to opt out. N/A
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe. N/A
21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort). Workers Compensation 60%; Family Law 20%; Tort 10%; Other 10%
22. If you are able to provide settlement statistics per case type, please do so. Not available.
23. What types of civil cases, if any, are ineligible for mediation in your program? None other than noted in question 6.
24. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe. No.
25. What do you rate as the most significant successes of your appellate mediation program to date?
26. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?
27. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources? No appreciable affect; less than 5% of all civil cases resolved by mediation annually.
28. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.
29. Has your program been evaluated? not evaluated.

Name of mediation Program Director/Administrator:

Director Judge Sanford Steelman

Administrator Ms. Cherry Hardister

Address: P.O. Box 888, Raleigh, NC 27602

Telephone: 919-831-3790

Website: [www.nccourts.org/Courts/Appellate/Appeal/Mediation](http://www.nccourts.org/Courts/Appellate/Appeal/Mediation)

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1/17/2012

John C Martin  
Name

  
Signature

Chief Judge  
Title

**MEMORANDUM:**

**TO:** Chief Judge Martin and COA Judges  
**FROM:** Sanford L. Steelman, Jr., Mediation Coordinator  
**DATE:** April 19, 2011

**RE:** Report on Court of Appeals Mediations  
Court of Appeals Conference April 19, 2011

**ALL MEDIATIONS:**

Total cases to mediation (1/1/2010 - 3/2011)	61
Settled/Withdrawn	27
Opinions filed	15
No opinion filed/still pending	19
Percentage of disposed cases sent to mediation that were resolved with no COA opinion	64.28%
Total opinions filed	15
Affirm/No Error/Dismiss	13
Reverse/Remand	2
Percentage of cases where trial court affirmed	86.67%

**COURT OF APPEALS MEDIATIONS:**

Total cases to mediation (1/1/2010 - 3/2011)	43
Settled/Withdrawn	21
Opinions filed	12
No opinion filed/still pending	10
Percentage of disposed cases sent to mediation that were resolved with no COA opinion	63.6%
Total opinions filed	12
Affirm/No Error/Dismiss	10
Reverse/Remand	2
Percentage of cases where trial court affirmed	83.33%

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PRIVATE MEDIATIONS:

Total cases to mediation (1/1/2010 - 3/2011)	18
Settled/Withdrawn	6
Opinions filed	3
No opinion filed/still pending	9
Percentage of disposed cases sent to mediation that were resolved with no COA opinion	66.66%
Total opinions filed	3
Affirm/No Error/Dismiss	3
Reverse/Remand	0
Percentage of cases where trial court affirmed	100%

HOME

# THE NORTH CAROLINA COURT SYSTEM

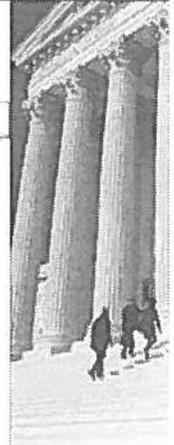
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- ❖ [Mediation Forms](#)

### Mediation

The N.C. Supreme Court has authorized the N.C. Court of Appeals to undertake a mediation program. Appellate mediation will offer participants an opportunity to voluntarily submit their appeal to the Court of Appeals for a candid evaluation by an informed, neutral person in a confidential setting. The focus will be on encouraging settlement and, thus, reaching an agreeable disposition of the appeal. All civil cases, with the exception of termination of parental rights and juvenile cases, are eligible for mediation. A case will not, however, be assigned for mediation unless all the parties to the appeal have agreed to the mediation.

To contact someone about a North Carolina Court of Appeals mediation issue please send e-mail to: [mediate@coa.state.nc.us](mailto:mediate@coa.state.nc.us).

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## Mediation Instructions

*(revised June 2004)*

Since 1 August 2002, the Clerk of the Court of Appeals has furnished with its docketing notice a "Consent to Appellate Mediation" form, in all cases eligible to participate in the Court's mediation program. The mediation program ran as a pilot for eight months and in February 2004 became permanent. The form goes to counsel for all parties (parties proceeding pro se are not eligible for mediation), who should complete and return the form within 20 days after docketing, and serve on all other counsel.

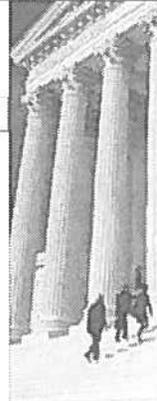
Participation in mediation does not delay the printing of the record on appeal or suspend the deadlines for the filing of briefs, as set forth in the Rules of Appellate Procedure. **The parties are responsible for moving the Court of Appeals to extend any deadlines that would otherwise run while mediation proceeds.**

When all parties consent to mediate, they must also agree on the type of mediator. There are three options: parties may choose (1) a current Court of Appeals judge, trained as a mediator (Current Judge), (2) a Emergency Recalled Court of Appeals judge (Recalled Judge), trained as a mediator, or (3) a privately employed mediator (Private Mediator). If the parties choose to use a Current Judge, that judge will be assigned on a rotating basis from the list of trained judge-mediators, will serve at no fee to the parties, and thereafter will not participate in any other capacity in the appeal of the case. If the parties elect to employ a Recalled Judge, that person will serve for a flat fee of \$300.00 per day or part thereof, and thereafter will not participate in any other capacity in the appeal of the case. If the parties elect to employ a private mediator, that person's fee will be set by agreement between the parties and the mediator, and will be due and payable upon completion of the mediated settlement conference. Once the parties consent to mediation and a mediator has been designated, the mediator should promptly schedule and conduct the mediation.

Upon request of the mediator, the parties should each supply to the mediator, at least 2 days before the scheduled conference, a "Mediation Statement," no more than 4 pages in length. The statement should include: (1) a brief history of the litigation, (2) the history of any efforts to settle the case, including any offers or demands, (3) a summary of the parties' legal positions, (4) the present posture of the case, including any related litigation in the trial tribunal, and (5) any proposals for settlement. The Mediation Statement must **not** be filed in the office of the Clerk of the Court of Appeals.

Counsel and parties must be present for the mediation unless excused by the mediator. The mediation, if conducted by a Current Judge, will be held in the Court of Appeals Building in Raleigh (or nearby overflow facilities) unless the parties and the mediator agree otherwise. Private Mediators may use the Court of Appeals facilities for the mediation, but in case of scheduling conflicts, a session of Court in the Court of Appeals or a mediation by a Current Judge will have priority for use of those facilities. Telephonic mediation may be used if all parties and the mediator agree.

All mediation sessions are confidential. All information shared during the course of the mediation, including the Mediation Statement, will be kept confidential, and will not become part of the record on appeal. Such information will not be disclosed to others, including the judges on the panel if the appeal moves forward. Neither the parties, counsel nor the mediator will disclose any statements, discussions, or actions taken in the course of the mediation, in subsequent briefs, oral arguments or in any other communication to the Court, except to the extent necessary to complete the Report of Mediator Form (required within 5 days after completion) or to inform the Court that mediation was successful or not. If the mediation is successful, the appellant is responsible for moving to dismiss both the appeal (form motion provided) and the case in the trial court, if necessary.



**NORTH CAROLINA COURT OF APPEALS  
CONSENT TO APPELLATE MEDIATION FORM**

Case# / Title: COA \_\_\_\_\_

Please check one of the following:

I consent to mediation and request a current Court of Appeals judge-mediator be assigned to serve as the mediator.\*

I consent to mediation and will employ an Emergency Recalled Court of Appeals Judge (Recalled Judge) who has been trained in mediation and agree to pay the costs associated with the services of that mediator. (The Court of Appeals Mediation Office has the names and addresses of the Recalled Judges.)\*

I consent to mediation and will employ a private mediator and pay the costs associated with the services of that person. (Appellant use attached form "Designation of Private Mediator.")\*

I do not consent to mediation.

\_\_\_\_\_  
Type or print name of law firm (if applicable)

\_\_\_\_\_  
Print name and date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Telephone number and e-mail address

I certify that I have served a copy of this "Consent to Appellate Mediation Form" on all other parties to this appeal. This the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
Signature

For further inquiries concerning the mediation process, please contact the Court of Appeals Mediation Office at (919) 733-3561 or 715-5176, or by e-mail to [mediate@coa.state.nc.us](mailto:mediate@coa.state.nc.us).

**Note: This form must be completed and mailed to Office of the Clerk, North Carolina Court of Appeals, P.O. Box 2779, Raleigh, NC 27602.**

**\*If all the parties do not agree to the same type of mediator (i.e. Court of Appeals Judge, Recalled Judge, or Private Mediator) the case will NOT be mediated.**

**NORTH CAROLINA COURT OF APPEALS  
DESIGNATION OF PRIVATE MEDIATOR FORM**

Case# / Title: COA \_\_\_\_\_

Appellant's Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Address \_\_\_\_\_ Fax \_\_\_\_\_

\_\_\_\_\_ E-Mail \_\_\_\_\_

Appellee's Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Address \_\_\_\_\_ Fax \_\_\_\_\_

\_\_\_\_\_ E-Mail \_\_\_\_\_

All parties in this case have agreed to a mediated settlement conference and have selected the private mediator named below, who has agreed to serve.

Mediator's Name \_\_\_\_\_ Telephone \_\_\_\_\_

Address \_\_\_\_\_ Fax \_\_\_\_\_

\_\_\_\_\_ E-Mail \_\_\_\_\_

The parties will bear equally the cost for the selected mediator, unless otherwise agreed.

\_\_\_\_\_  
Counsel for Appellant

\_\_\_\_\_  
Date

**Note: This form must be completed only if a Private Mediator is designated. Please mail to Office of the Clerk, North Carolina Court of Appeals, P.O. Box 2779, Raleigh, NC 27602.**

**For more information please see [www.nccourts.org](http://www.nccourts.org) (Court of Appeals, Mediation)**



**NORTH CAROLINA COURT OF APPEALS  
REPORT OF MEDIATOR**

N.C. Court of Appeals ~ Clerk's Office ~ P.O. Box 2779 ~ Raleigh, NC 27602

Case# / Title: COA \_\_\_\_\_

**MEDIATOR SHOULD COMPLETE AND SEND TO COURT OF APPEALS CLERK'S OFFICE WITHIN 5 DAYS AFTER THE CONFERENCE.**

The undersigned mediator reports the following results of a mediated settlement conference in this case:

**Mediation Conference**

\_\_\_ was held and completed on \_\_\_\_\_

\_\_\_ not held/not completed/ mediator's involvement ceased as of \_\_\_\_\_

**Mediation Result**

The parties reached an: \_\_\_ agreement on all issues. \_\_\_ agreement on some issues. \_\_\_ impasse.

Issues settled will be disposed of by: \_\_\_ consent judgment. \_\_\_ other agreement. \_\_\_ n/a.

Voluntary dismissal of the appeal and the case in the trial tribunal, if still pending, must be filed by the appellant within 30 days of execution of the settlement or consent judgment, or of the order approving settlement, if required.(e.g., Industrial Commission cases.)

I have submitted this report within 5 days after conclusion of the mediated conference.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Print Name of Mediator

\_\_\_\_\_  
Signature of Mediator

For more information please see [www.nccourts.org](http://www.nccourts.org) (Court of Appeals, Mediation)

No. COA \_\_\_\_\_

**NORTH CAROLINA COURT OF APPEALS**

\*\*\*\*\*

Case Name: \_\_\_\_\_

\*\*\*\*\*

**MOTION TO DISMISS**

\*\*\*\*\*

The undersigned hereby moves that the above appeal be dismissed as agreed by the parties in a mediated settlement conference. Undersigned counsel represents to the Court that all appellate counsel of record consent to this dismissal.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

I HEREBY CERTIFY that I have this day served a copy of this document upon all opposing counsel by placing a copy of same in the United States Mail.

\_\_\_\_\_  
Signature - Counsel for the Appellant

\_\_\_\_\_  
Printed Name - Counsel for the Appellant

\_\_\_\_\_  
Bar Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
E-Mail Address

**For more information please see [www.nccourts.org](http://www.nccourts.org) (Court of Appeals, Mediation)**

Survey Response

# North Dakota

STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established?  
Drafting program, hoping to establish in 2012
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? It will be established through court rule.
3. Are mediations ordered by the court or is mediation an optional service provided upon request? It is proposed that it will be ordered by the court (mandatory).
4. When did the program begin conducting mediations? N/A
5. How many civil appeals are administered by your court annually? N/A
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process. (a) **Eligible Cases.** Only final and appealable judgments and orders in the following types of cases will be eligible for participation in appellate mediation:

- (1) divorce cases involving property or spousal support;
- (2) any case involving parenting rights, residential responsibilities or support of minor children; and
- (3) any case involving the probate or administration of any estate.

Upon the request of either party, a case that meets the Appellate Mediation Program criteria will be referred to mediation. In those cases where the issues raised are limited to a question of law, a party may request an order from the court exempting them from the Appellate Mediation Program by filing a motion and affidavit with the Clerk of the Supreme Court.

7. How many cases were mediated in the most recent year? N/A
8. How many cases settled in mediation in the most recent year? N/A  
Full settlements \_\_\_\_\_ Partial settlements \_\_\_\_\_
9. How does your program define a "partial settlement?" N/A

10. Does your program offer mediation in cases with self-represented parties? N/A  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?
11. Who serves as mediators in your program? How many of such mediators are currently active in your program? N/A

(3) These are the proposed qualifications: Appellate Family and Child Custody Proceedings / Probate Mediator Roster. A family/child custody/ probate proceedings mediator shall complete 40 hours minimum of domestic relations mediation training, including two hours minimum of domestic abuse training, and nine hours of continued domestic relations mediation training during each three-year period; and

(A) have a license to practice law supplemented with two years of experience in domestic relations and/or probate cases; and

(B) have two years minimum experience in family and/or probate appellate practice.

12. How are mediators selected or designated for a particular case? N/A
13. Are your cases mediated by one mediator or are they co-mediated? Proposed – one mediator
14. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services. N/A
15. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program. N/A
16. What is the annual cost of the program? N/A
17. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve

as mediators in your program? N/A

18. If parties are ordered to mediation in your program, are they permitted to “opt-out” of mediation? Please describe the grounds permitted to opt-out. N/A
19. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe. N/A
20. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort) N/A
- 1) \_\_\_\_\_ %
- 2) \_\_\_\_\_ %
- 3) \_\_\_\_\_ %
- 4) \_\_\_\_\_ %
- 5) \_\_\_\_\_ %
- 6) \_\_\_\_\_ %
- 7) \_\_\_\_\_ %
21. If you are able to provide settlement statistics per case type, please do so. N/A
22. What types of civil cases, if any, are ineligible for mediation in your program? N/A
23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe. N/A
24. What do you rate as the most significant successes of your appellate mediation program to date? N/A
25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country? Best practices.
26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources? N/A

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program. They are currently drafts so I am not able to share.

28. Has your program been evaluated? If so, could you share the results of the evaluation? n/a

Mediation Program Name:

Court: ND Supreme Court

Court Case Jurisdiction: State of ND

Court Geographic Jurisdiction:

Name of Mediation Program Director/Administrator: Cathy Ferderer

Address: 600 E Boulevard Ave Dept 180  
Bismarck, ND 58505

Telephone: 701-328-2695

Email: cferderer@ndcourts.gov

Website: www.ndcourts.gov

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1/11/12

Name Cathy Ferderer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

Survey Response

**Ohio**

4<sup>th</sup> Appellate District

STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established? 2005
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? Local Rule
3. Are mediations ordered by the court or is mediation an optional service provided upon request? Both
4. When did the program begin conducting mediations? November 2005
5. How many civil appeals are administered by your court annually? Approx. 112
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.

The mediator reviews all new civil appeals filed with the court to determine suitability for mediation, looking at type of case, type of order being appealed (i.e. summary judgment, jury verdict, etc.), etc. We also look at the docketing statement completed by the appellant which asks whether any settlement negotiations after occurred and whether the appellant thinks mediation would be helpful.

7. How many cases were mediated in the most recent year? 30 \* (mediator was on maternity leave for one quarter)
8. How many cases settled in mediation in the most recent year?  
Full settlements 14 Partial settlements 0
9. How does your program define a "partial settlement?"

We do not keep statistics on partial settlements. However, in some cases the parties may agree to narrow the issues that our court needs to decide and we would consider this a partial settlement.

10. Does your program offer mediation in cases with self-represented parties?  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?

Yes. A very small percentage (perhaps 5%) of our cases include self-represented parties. These cases are screened more stringently to ensure that the mediations are not "lopsided" in favor of the represented parties. Generally, these cases are screened by telephone calls with the unrepresented party to determine his or her level of comfort in participating in mediation without counsel. We have also spoken to the represented party (through counsel) about appearing without counsel (with counsel available by phone for consultation), and have sometimes held mediations with two self-represented parties.

11. Who serves as mediators in your program? How many of such mediators are currently active in your program?

A staff attorney serves as the mediator. Currently, we have one active mediator.

12. What are the required qualifications for appellate mediators in your program?

Formal mediation training (3 day program) as well as continuing education classes.

13. How are mediators selected or designated for a particular case?

One mediator mediates all cases.

14. Are your cases mediated by one mediator or are they co-mediated?

One mediator

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

Usually, a directive/analytical approach is used.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

The court mediator is hired by and reports to the judges and the court administrator. However, the selection of cases for mediation is in the mediator's discretion. Judges may refer cases to mediation.

17. What is the annual cost of the program?

Approximately \$20,000.

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?

There is only one person overseeing the mediation program without support staff.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.

Parties cannot formally "opt-out"; however, they can contact the mediator if they believe a case has been inappropriately assigned to mediation and explain the basis for the position. Ultimately, it is the mediator's decision whether to require that the mediation proceed.

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons arising from the mediation process? If so, have such sanctions been imposed? Please describe.

No, but a party may file a motion for sanctions if appropriate. To date, no such motion has been filed.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

- 1) \_\_\_\_\_ Tort \_\_\_\_\_ 30\_\_%
- 2) \_\_\_\_\_ foreclosure/collection \_\_\_\_\_ 23\_\_%
- 3) \_\_\_\_\_ real property \_\_\_\_\_ 13\_\_%
- 4) \_\_\_\_\_ domestic \_\_\_\_\_ 10\_\_%
- 5) \_\_\_\_\_ contract \_\_\_\_\_ 6\_\_%
- 6) \_\_\_\_\_ landlord/tenant \_\_\_\_\_ 6\_\_%
- 7) \_\_\_\_\_ employment \_\_\_\_\_ 6\_\_%

21. If you are able to provide settlement statistics per case type, please do so.

22. What types of civil cases, if any, are ineligible for mediation in your program?

Civil protection orders and family law cases involving domestic violence are ineligible for mediation.

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

No.

24. What do you rate as the most significant successes of your appellate mediation program to date?

Settling complex cases and assisting parties to work through procedural issues when mediation is unsuccessful.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

Our greatest challenge is that our district covers a large geographic area (14 counties). Therefore, it is a difficult balance between requiring participation in mediation and

placing an undue burden on parties who must expend a great deal on attorney's fees and travel costs in order to participate.

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

The program has decreased the workload for the judges and law clerks. It has also shortened the time that it takes for opinions to be released.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

28. Has your program been evaluated? If so, could you share the results of the evaluation?

No.

Mediation Program Name:

Court: Fourth District Court of Appeals, State of Ohio

Court Case Jurisdiction: appeals from lower courts & original actions

Court Geographic Jurisdiction: Fourteen counties in Southeastern Ohio

Name of Mediation Program Director/Administrator: Sharon Maerten-Moore

Address: 14 S. Paint St., Suite 38  
Chillicothe, OH 45601

Telephone: 740-779-6662

Email: smaertenmoore@gmail.com

Website:

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1-27-12

Sharon A. Maerten-Moore  
Name

Sharon A. Maerten-Moore  
Signature

Court Administrator  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

of court shall post the proposed changes in a conspicuous public place in the clerk's office, make copies available for distribution to members of the bar and provide copies to each trial judge in the county for which the clerk serves. The proposed changes shall be open to public comment for a period of sixty (60) days. The court may adopt a new rule or amend or modify an existing rule if, in the opinion of the court, exigent circumstances so require but shall promptly afford notice and opportunity for comment thereafter in the manner provided above.

### **LOCAL RULE 21 EFFECTIVE DATE AND APPLICABILITY**

The amended rules shall take effect July 1, 2011. They shall govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that, in the opinion of the court, their application in a particular action pending when these rules take effect would not be feasible or would work an injustice.

Adopted this May 1, 2011, pursuant to App.R. 41 and Section 5 (B), Article IV, Ohio Constitution, and filed with the clerks of the fourteen counties of this district, and a copy hereof to be filed with the Supreme Court of Ohio.

### **LOCAL RULE 22 PREHEARING CONFERENCE; MEDIATION**

(A) **Scheduling.** The court's administrative counsel will review the notice of appeal, the trial court's judgment, and the docket statement in all civil and administrative appeals to determine whether a mediation conference is appropriate. If so, the court will notify the attorneys, or the litigants if unrepresented, of the name of the mediator and the date, time and location of the mediation. Any party may telephone the court to request a mediation conference. Any request for a mediation conference will be confidential if the requesting party desires.

(B) **Purpose and Procedure.** The person conducting the mediation conference will be the court's administrative counsel or magistrate. The attorneys primarily responsible for the case, as well as their clients, are required to attend the mediation in person, or with the approval of the administrative counsel, by telephone. The goals of the mediation are: (1) to explore settlement possibilities, (2) to simplify the issues in the appeal if settlement is not achieved, and (3) to consider any procedural problems that exist, may arise, or be anticipated in connection with the appeal.

The court will attempt to schedule the mediation before any additional expense is incurred by the parties in proceeding with the appeal, that is, before the transcript of proceedings, if any, is filed or before appellant's brief is due, if no transcript of proceedings is to be filed.

(C) **Extensions of Time to Transmit Record and File Briefs.** The

scheduling of a mediation conference **does not** stay the time for filing the transcript of proceedings or briefs. If a mediation conference is to occur after the date for transmitting the record under App.R. 10, or after the date the appellant's or the appellee's brief is due under App.R. 18, any party may telephone the administrative counsel and request an order extending the time, until after the mediation, in which to transmit the record or file a brief. Thereafter, if the administrative counsel determines that the parties are negotiating in good faith, additional extensions of time will be recommended on a party's oral request.

(D) **Confidentiality.** All statements and comments made in settlement negotiations during a prehearing conference are confidential, unless all parties expressly agree otherwise, and shall not be disclosed by the administrative counsel or by counsel in briefs or argument to the court.

(E) **Noncompliance Sanctions.** If a party or attorney fails to comply with the provisions of this rule or the provisions of the prehearing conference notice, the court may assess reasonable expenses caused by the failure, including attorney fees. The court may also assess all or a portion of the appellate costs or dismiss the appeal. Such sanctions may be imposed by the court sua sponte or at a party's request.

### **LOCAL RULE 23 COUNSEL; ADMISSION PRO HAC VICE**

(A) **Appearance of Counsel.** An attorney representing a party on appeal, but who was not listed on the docketing statement, must file a notice of appearance with the court of appeals.

(B) **Appointment of Counsel.** Except in appeals pursuant to App.R. 5(A), a request for appointment of counsel shall be filed in the first instance with the trial court. A party that files a motion to appoint counsel with the court of appeals must attach proof showing that the trial court denied a similar request along with a Financial Disclosure/Affidavit of Indigency.

(C) **Withdrawal of Counsel.** Counsel who has entered an appearance with this court, whether appointed or retained, may not withdraw representation without leave of court. Counsel seeking to withdraw shall file a motion showing good cause for the request. In addition, counsel shall submit proof of service of the motion upon the client and the name and address of any substitute counsel, or if none, the name and address of the client.

(D) **Attorney Fees.** When seeking payment for work provided in an appeal, counsel shall file the motion with the court of appeals, not the trial court, no matter which court made the appointment. Motions for approval of appointed counsel fees and expenses must be submitted on the form prescribed by the Office of the Ohio Public Defender, which is available on its website. Counsel shall attach a copy of the entry appointing counsel and a copy of the Financial Disclosure/Affidavit of Indigency to the completed form. Incomplete applications, applications submitted without the necessary

**COURT OF APPEALS OF OHIO  
FOURTH DISTRICT COURT OF APPEALS  
LOC.R. 22 PREHEARING CONFERENCE PROCEDURES**

Pursuant to App.R. 20 and Loc.R. 22, the Court conducts a prehearing mediation conference to encourage and facilitate the settlement and resolution of civil and administrative appeals. The conferences afford litigants the opportunity to candidly evaluate their cases with an informed neutral and to explore the possibilities for voluntary resolution of the litigation. The following are some answers to commonly asked questions about the procedure:

**How are cases selected for prehearing mediation conferences?** All civil and administrative appeals are eligible for mediation. Cases are selected by the Court, but counsel may also confidentially request a prehearing conference. The Court may grant these requests at its discretion.

**How are counsel advised that their appeal has been selected for a prehearing mediation conference?** Counsel receive a Notice of Loc.R. 22 Conference advising them of the date and time of the conference, whether it is to be held by telephone or in person, and where it will be held if in person.

**Why are conferences scheduled shortly after the notice of appeal is filed?** Loc.R. 22 conferences are held shortly after the notice of appeal is filed so that resolution of the appeal or settlement of the case can be explored prior to the parties incurring further cost and expense on appeal.

**Are the times on appeal suspended upon notice of a Loc.R. 22 conference?** No. The times on appeal continue running as usual. However, a request for a continuance can be made by written motion or by contacting the administrative counsel or court administrator at (740) 779-6662. The Court may grant the request if it is deemed to be conducive to the mediation process.

**What if I have an unavoidable conflict with the scheduled date and time?** If you need to reschedule because of a previously scheduled court appearance, planned vacation, or unforeseen emergency, please immediately call the administrative counsel at (740) 779-6662. Alternative dates and times will be provided to you. It is the duty of the rescheduling attorney to contact all other counsel in the case to arrive at a mutually agreeable date and time and then to promptly notify the administrative counsel of the rescheduled date and time.

**Is participation in prehearing conferences optional?** No. Participation is mandatory.

**Must each party's lead attorney attend the conference?** Yes. It is critical that each party be represented at the prehearing conference by the attorney who is not only conversant with the case, but is also the attorney on whose advice the client chiefly relies.

**Are the parties required to attend the conference?** If the notice indicates that client attendance is mandatory, the clients must be present with counsel at the prehearing mediation conference. If clients are not required to attend the initial conference, parties or their designated representatives with full settlement authority shall be available by telephone for the duration of the conference to facilitate settlement discussions. Client participation is encouraged when it will be helpful or conducive to the settlement discussions.

**What preparation is required of counsel?** Counsel are to consult with their clients prior to the conference and obtain the requisite settlement authority. Care should be taken to include all the necessary "decision makers." Counsel are to be prepared to fully explore in good faith all options, avenues, and possibilities which might lead to a mutually acceptable resolution of the case. Counsel should also review their factual and legal interests prior to the conference. Discussion of settlement is not necessarily limited to the appeal itself. If settlement of the appeal will not dispose of the entire case or, if related litigation is pending or anticipated in other forums, counsel are encouraged to explore the possibility of a global settlement.

**How long do conferences last?** On average, the conferences last approximately one hour. However, the administrative counsel will afford counsel and the parties as much time as necessary to accomplish the purposes of the prehearing conference.

**What takes place at the prehearing conference?** While prehearing conference procedures are official proceedings of the Court, they are conducted in a relatively informal manner. Discussions are typically conversational rather than argumentative. Initially, procedural issues and questions are addressed. The primary substantive issues and anticipated assignments of error are then discussed. Thereafter, resolution is actively explored through the mediation process. The mediation focuses on possible outcomes on appeal, the risks and costs of further litigation, the interests and motivations of the parties, and the potential benefits gained by resolution of the appeal or settlement of the entire case. The administrative counsel typically meets jointly with counsel and the parties and then meets separately with each side in her role as mediator. Settlement options and proposals are thoroughly discussed. Resolution may or may not be reached during the initial conference. Following an initial conference, the administrative counsel typically initiates further discussions by telephone or e-mail, or will schedule follow-up conferences if helpful. By the conclusion of the prehearing conference process, the parties have either reached a resolution or have identified the remaining obstacles and areas of impasse.

**What is the role of the administrative counsel in the prehearing conference process?** The administrative counsel serves as a neutral and impartial mediator and may perform a variety of roles as may be conducive to the settlement process. She may act as a facilitator, moderator or intermediary. She may also act as a sounding board or a reality check. Typically, she will encourage neutral analysis rather than arguments and accusations. She will assist as needed in the generation of possible options for resolution and encourage collaborative problem-solving in the search for mutually agreeable terms.

Throughout the mediation process, she will maintain the confidences of the parties and make no recommendation to the Court on the merits of the case.

**Are pre-hearing conferences confidential?** Yes. Pre-hearing conferences are confidential and off the record, unless the parties explicitly agree otherwise.

**Do judges of the Court of Appeals know what transpires at prehearing conferences?** No. Any settlement discussions or negotiations which have taken place at a prehearing conference remain confidential and are not revealed to the Court. The prehearing conference process provides appellate counsel and the parties with a confidential and credible, no risk and low cost environment in which counsel and the parties can actively explore options and avenues of resolution which are consistent with the best interest of their clients. If no agreements are reached, the case is absolutely unaffected and those in the decisional process that might follow know nothing about the mediation discussions. The administrative counsel's notes and documents created for settlement purposes will not become part of the Court's file.

**How can I best use the Loc.R. 22 conference to benefit my client?** Recognize that the pre-hearing conference procedures provide a short window of opportunity to achieve a favorable outcome consistent with your client's overall interests and risks. While maintaining your role as an advocate, understand that the appellate mediation conference is essentially cooperative rather than adversarial. Take advantage on appeal of the opportunity to talk constructively and confidentially with counsel for the other parties. Listen closely to what the other participants have to say. Try to be as candid as possible without posturing. Be persuasive yet open to persuasion. Keep in mind that rigidly adhering to a predetermined "bottom line" is usually unproductive because your views about the case, based on new insights and information, often change during the course of the mediation process. This may lead to additional and unanticipated avenues and options for resolution and mutual gain.

**How can a prehearing conference be requested?** Counsel may confidentially request a pre-hearing conference by calling or writing Administrative Counsel Sharon A. Maerten-Moore or Court Administrator Aaron M. McHenry at Fourth District Court of Appeals, 14 South Paint Street, Suite 38, Chillicothe, Ohio 45601, (740) 779-6662. Alternatively, counsel may request a conference by formal motion filed with the Court. If the request is granted, counsel will be notified that a conference has been scheduled.

Survey Response

**Ohio**

6<sup>th</sup> Appellate District

STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established? 1992
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? Rule
3. Are mediations ordered by the court or is mediation an optional service provided upon request? Optional service but the court selects cases to mediate and parties may request mediation.
4. When did the program begin conducting mediations? 1992
5. How many civil appeals are administered by your court annually? 322
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process. Type of order being appealed, attorney's belief that mediation will be helpful. Some cases rejected
7. How many cases were mediated in the most recent year? because of past experience with attorney.  
26
8. How many cases settled in mediation in the most recent year?  
26  
Full settlements 11 Partial settlements 0
9. How does your program define a "partial settlement?"  
We don't.
10. Does your program offer mediation in cases with self-represented parties? Yes  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties? 2%  
No
11. Who serves as mediators in your program? How many of such mediators are currently active in your program? An attorney hired by the court. 1.
12. What are the required qualifications for appellate mediators in your program?  
An attorney.
13. How are mediators selected or designated for a particular case?  
N/a
14. Are your cases mediated by one mediator or are they co-mediated?  
One mediator.
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services. Facilitative.
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.  
Our mediator is self directed.
17. What is the annual cost of the program?  
Unknown. Our mediator is also our court administrator. Unable to determine what percentage of time is spent on mediation.

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program? 1. 10.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.

N/a

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe. Yes. No. A party can ask for sanctions by the court if opposing party does not show up for a scheduled mediation.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

- 1) Contract 46 %
- 2) Foreclosure 26 %
- 3) Divorce 17 %
- 4) Quiet Title 3 %
- 5) Real Prop. Dispute 3 %
- 6) Tort 7 %
- 7) Consumer protection 3 %

21. If you are able to provide settlement statistics per case type, please do so.

22. What types of civil cases, if any, are ineligible for mediation in your program?

Domestic Violence, Civil Protection Orders

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

No.

24. What do you rate as the most significant successes of your appellate mediation program to date? Attorneys buy into the program and want to mediate.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

None.

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources? Fewer cases to decide on the merits. No. None.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

28. Has your program been evaluated? If so, could you share the results of the evaluation? No

Mediation Program Name:

Court: Ohio Sixth District Court of Appeals

Court Case Jurisdiction: Appeals from final orders of courts of record.

Court Geographic Jurisdiction: Eight counties, one of 12 District Appellate Courts.

Name of Mediation Program Director/Administrator:

Frances King

Address:

Telephone:

Email:

Website:

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 2/6/12

Frances King  
Name

Frances King  
Signature

Court Administrator  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

### RULE 13. MEDIATION

The court offers a mediation service to litigants who have a case pending in the court and provides a mediator at no charge. The following mediation procedures apply to this service.

**(A) Scheduling a Mediation.** The court's mediation attorney shall review the notice of appeal, the trial court's judgment from which the appeal is taken, and the docketing statement in all civil and administrative appeals to determine whether a mediation will be scheduled.

If a mediation is scheduled, the court will notify the attorneys, or the parties if unrepresented, of the name of the mediator and the date, time and location of the mediation.

Any party may telephone the court to make a confidential request for mediation or to request that a scheduled mediation be canceled.

**(B) Purposes and Procedure of the Mediation.** Only the court's mediation attorney will conduct mediations. The attorneys primarily responsible for the case, as well as their clients, are required to attend the mediation in person, or with the approval of the mediator, by telephone. The goals of the mediation are: (1) to explore settlement possibilities, (2) to simplify the issues in the appeal if settlement is not achieved, and (3) to deal with any procedural problems which exist, may arise, or are anticipated in connection with the appeal.

The court will attempt to schedule the mediation before any additional expense is incurred by the parties in proceeding with the appeal, i.e. preparation of the transcript of proceedings or briefs.

Survey Response

**Ohio**

8<sup>th</sup> Appellate District

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established? **1990.**
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?

**The Court of Appeals established the program through the adoption of a local appellate rule.**

3. Are mediations ordered by the court or is mediation an optional service provided upon request?

**Both. The Court will order parties to mediation but for those parties that are not ordered, the office may receive a call asking for us to hold a mediation conference which we will do.**

4. When did the program begin conducting mediations?

**October, 1990.**

5. How many civil appeals are administered by your court annually?

**Between 700-900 cases.**

6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.

**Cases are selected based upon the parties request for a mediation; whether the matter involves a monetary judgment; whether the matter presents an interesting legal issue; and if the matter needs a pre-trial conference to help the parties establish the record or define the issues for appeal.**

7. How many cases were mediated in the most recent year? **322**

8. How many cases settled in mediation in the most recent year? **66 cases were settled and 87 cases were administratively dismissed.**

Full settlements   64   Partial settlements   2  

9. How does your program define a "partial settlement?"

**One of the appellants dismisses his or her appeal against one of the parties but the matter continues forward on appeal.**

10. Does your program offer mediation in cases with self-represented parties? If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?

**The court does allow self-represented parties to participate in the program. The number of self-represented participants is around 10 percent. The program treats the self-represented parties similarly to represented parties but will take extra time to explain appellate rules if the matter fails to settle.**

11. Who serves as mediators in your program? How many of such mediators are currently active in your program?

**Ellen Ashwill is the Senior Conference Attorney and David Shively is the Conference Attorney. David Shively serves as the active mediator in the program.**

12. What are the required qualifications for appellate mediators in your program?

**Must be an attorney licensed in the State of Ohio, in good standing, and certified in basic mediation.**

13. How are mediators selected or designated for a particular case?

**All of the mediations are handled by the court's conference attorney. The Senior Conference Attorney is available to mediate and will do so as needed.**

14. Are your cases mediated by one mediator or are they co-mediated?

**One mediator.**

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

**Our mediators essentially use a facilitative mediation approach but have also used mediation combined with neutral case evaluation to a lesser degree. As stated above, the Conference Attorney will also assist the parties in narrowing the issues on appeal as well as assist with any procedural issues that could interfere with an efficient appellate process.**

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

**The only judge that has any role in the program is the Administrative Judge to whom this office makes recommendations as to due date and remand orders which are used by the mediator to help settle the case.**

17. What is the annual cost of the program?

**Salaries of the office which consist of : (Approximately 20% of a Senior Conference/Motions Attorney), 100% of Conference Attorney, and 100% of an Administrative Assistant.**

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?

**Please see above. The office has one administrative assistant who does not participate as a mediator.**

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.

**Yes. If the parties explain that they are not willing to settle the matter the conference attorney will contact the opposing side to discuss whether a conference should still proceed forward. Generally, if the opposing side still desires the conference, the mediation will go forward.**

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe.

**Yes. The 8<sup>th</sup> District Local Appellate rules allow this court to sanction the side who fails to attend the mediation by making them pay opposing attorney fees related to attending the mediation. As a drastic measure, this court may also dismiss the appeal if the appellant fails to comply, but that sanction is rarely used.**

**This court has granted motions for sanctions based upon motion and has also dismissed, sua sponte, appeals when the appellant has failed to show up after numerous reschedules.**

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

- 1) Contract \_\_\_\_\_ 40 %
- 2) Tort \_\_\_\_\_ 30 %
- 3) Domestic \_\_\_\_\_ 10 %
- 4) Probate \_\_\_\_\_ 10 %

5) Administrative \_\_\_\_\_ 5 %

6) Other \_\_\_\_\_ 5 %

22. If you are able to provide settlement statistics per case type, please do so.

N/A

22. What types of civil cases, if any, are ineligible for mediation in your program?

**This court reviews every civil matter that is filed to determine if it should be mediated. If there is a question, the mediator will contact the parties to determine if, in their view, mediation would be beneficial. Additionally, there are some matters (e.g., declaratory judgment actions, etc.) which are not suitable for mediation.**

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

N/A

24. What do you rate as the most significant successes of your appellate mediation program to date?

**The most significant success of the appellate mediation program is the outstanding relationships established with practicing attorneys and other courts within the Eighth District. These relationships have allowed the program to be viewed as a positive resource for the bench and bar within Cuyahoga County. Even when cases do not settle, the program can assist the parties by narrowing and focusing their access to the appellate process. This in turn saves parties time and money, and helps this court make better use of its limited resources.**

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

**Impact of the economy on mediation settlements; unrealistic expectations of parties regarding case value or possible outcomes; non-lawyer party representatives; limited additional training opportunities.**

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

**The number of settlements and dismissals has reduced the workload of the court. Since the 8th District is the largest appellate district in the State of Ohio, the conference program enhances the efficiency of the court. The reduced number of cases that need to be heard and disposed of by a merit panel is reduced; thereby, allowing the court to use its limited resources to timely decide other cases. Additionally, the effective working relationships developed with practicing attorneys has streamlined this court's efficiency. As noted above, conferences that do not result in settlements normally work to clarify the**

issues that will be argued on appeal thereby resulting in a more effective appellate argument and process.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

#### **RULE 20. PREHEARING CONFERENCE**

**Under App.R. 20, this court's prehearing conference procedure will operate as follows:**

**(A) Docketing Statement.** Each appellant and cross-appellant must complete a docketing statement and the praecipe form required by Loc.App.R. 9. The purpose of the applicable parts of the docketing statement is to determine whether an appeal will be selected for a prehearing conference.

**(B) Response By Appellee Or Cross-Appellee.** Within seven days after service of appellant's or cross-appellant's docketing statement, each appellee may file with the clerk of the court of appeals, with service on all other parties, a statement report not to exceed two pages, containing any information that may assist the court and parties in clarifying the issues or settling the appeal or crossappeal.

**(C) Prehearing Conference.**

**(1) Appeals to which this rule applies will be reviewed by a conference attorney to determine whether a prehearing conference, under App.R. 20, would assist the court or parties. Any party may request a prehearing conference, but the request need not be granted.**

**(2) If an appeal is selected for conference, upon seven days of notice from the office of the conference attorney, unless excused, counsel and parties (including insurance adjusters) are required to attend a prehearing conference before a judge, or the conference attorney, to be held within 21 days after the filing of the notice of appeal, or as soon thereafter as practicable, to consider the possibility of settlement, the simplification of issues, and such other matters as may aid in the disposition of the proceedings by the court.**

**(3) The statements and comments made in settlement negotiations during the prehearing conference are confidential, except to the extent disclosed by the prehearing conference order entered under Paragraph (D), and shall not be disclosed by the conference judge or conference attorney nor by counsel in briefs or argument to the court.**

**(D) Prehearing Conference Order.** At the conclusion of the prehearing conference, the judge or the presiding judge upon recommendation of the conference attorney may enter an order setting forth the actions taken and the agreements reached, which order will govern the subsequent course of proceedings, unless modified by the court.

**(E) Non-Compliance Sanctions. If a party or attorney fails to comply with the provisions of this rule or the provisions of the prehearing conference order, this court may assess reasonable expenses caused by the failure, including attorney fees. This court may also assess all or a portion of the appellate costs or dismiss the appeal.**

28. Has your program been evaluated? If so, could you share the results of the evaluation? N/A

Mediation Program Name: **Conference Program**

Court: **Ohio Court of Appeals – Eighth District**

Court Case Jurisdiction: **Cuyahoga County**

Court Geographic Jurisdiction: **Cuyahoga County**

Name of Mediation Program Director/Administrator: **Ellen Ashwill**

Mediator: **David A. Shively**

Address: **1 Lakeside Avenue, Cleveland, OH 44113**

Telephone: **216-348-4809**

Email: [ela@8thappeals.com](mailto:ela@8thappeals.com); [das@8thappeals.com](mailto:das@8thappeals.com)

Website: <http://www.appeals.cuyahogacounty.us/>

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 30-Jan-2012

DAVID A. Shively  
Name

David A. Shively  
Signature

Conference Attorney  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

Survey Response

**Ohio**

10<sup>th</sup> Appellate District

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

**Question 1:** Our appellate mediation program commenced November 1, 1989.

**Question 2:** The appellate mediation procedures were established pursuant to Ohio App.R. 20 and Tenth District Court Loc.R. 4 effective July 1, 1989 after working closely with the Columbus Bar Association.

**Question 3:** The vast majority of appellate mediations are ordered by the court, while appellate counsel may also request mediation, and referrals to mediation may be made by magistrates, judges and the court administrator's office.

**Question 4:** Appellate mediations were commenced November 1, 1989.

**Question 5:** 5,415 civil appeals and 313 workers' compensation mandamus actions have been mediated from November 1, 1989 through December 31, 2011:  
(5,728 ÷ 166 months = 21.5 x 12 = 258 mediation cases a year)

**Question 6:** All civil cases from the Common Pleas Court General, Domestic, Probate and Juvenile Divisions; the Franklin County Municipal Court; the Court of Claims and selected administrative cases are reviewed for possible mediation. Case type; disposition of the case; review of the decision or opinion appealed; number of parties; whether *pro se* litigants are involved; location of counsel; where the case sits in the appellate process before, during, or after briefing and before or after oral argument; whether the case has been previously appealed; and whether there are excluding factors such as domestic violence, are all factors examined and considered. This selection process is primarily conducted by the appellate mediator or other judge, magistrate or court official referring the case for mediation shortly after the notice of appeal or original action is filed and prior to appellate briefing.

**Question 7:** 217 civil appellate mediations were conducted in 2011.

**Question 8:** In 2011, as of December 31, 2011, 217 cases were mediated, of which 88 cases have been settled or otherwise dismissed; 97 cases are no longer in the mediation process; and 32 cases continue in the mediation process (14.7%). This court has never "counted" partial settlements, nor counted resolution of additional underlying trial court cases or companion trial court cases which have likewise been settled since 1989.

**Question 9:** Our court does not count "partial settlements", rather only dismissal of the entire appeal.

**Question 10:** This court has always mediated civil appeals with *pro se* litigants; particularly appeals from Municipal Court with monetary jurisdiction of \$15,000 or less, as well as from their Small Claim Court Division (\$3,000 or less), and also *pro se* litigants in domestic relations cases. *Pro se* litigants have never been excluded unless judicially deemed a "vexatious litigator" or other obvious factors such as domestic violence allegations, etc. Procedural issues and questions are addressed at each appellate mediation and with each *pro se* litigant, as well as represented parties with counsel.

DD 1-24-12

**Question 11:** David A. Doyle has served as Appellate Mediator since 1989 for the Tenth District Court of Appeals, Columbus, Ohio and is an employee of the Court.

**Question 12-13:** Mr. Doyle was the first state court appellate mediation employee in the state of Ohio (the Federal 6th Circuit Appellate Mediation Program precedes the 10th District). Mr. Doyle also has extensive trial court mediation experience in the state trial courts and U.S. District Court levels since 1989; he has extensive mediation and negotiation training; and he has trained, consulted and advised with initial and existing mediation programs in the state of Ohio and various courts nationally.

**Question 14:** See Question #6 as to the factors considered by Appellate Mediator, David Doyle, and the judges, magistrates and court officials who refer cases to Mr. Doyle to conduct appellate mediations.

**Question 15:** The Tenth District Court appellate mediator utilizes evaluative and facilitative strategies and techniques; as well as extensive "litigation risk analysis"; and "Getting to Yes: Harvard Negotiation Project, collaborative interest-based, BATNA/WATNA approaches, and a varied use of technologies to facilitate those techniques at both initial and follow-up mediation sessions.

**Question 16:** The Tenth District Court of Appeals judges, and in particular, its Presiding and Administrative Judges, which rotates annually, have provided outstanding leadership and support to Appellate Mediator Doyle from inception of the program in 1989 through present.

**Question 17:** The annual cost of the program is Mr. Doyle's salary; one-half of the salary of his Administrative Assistant, Ms. Adkins; and whatever other "fixed costs" are budgeted and allocated to the appellate mediation procedures and process.

**Question 18:** Ms. Adkins, noted above, is instrumental and critical in all aspects of daily management of the appellate mediation process and procedures both pre-mediation and post-appellate mediations and follow-up sessions. Likewise, she expertly addresses a litany of scheduling, rescheduling, and other administrative, reporting, and problem-solving activities which arise daily, weekly, and monthly.

**Question 19:** Parties and/or counsel typically may not "opt-out" of appellate mediation; rather, initial attendance is mandatory since appellate mediation, by definition, is "impasse mediation." However, if counsel, mutually agree to file a "joint motion" to cancel with supporting good cause, the Court will consider cancellation of mediation. Typically, while statistics are not kept, only a handful of cases are cancelled each year.

**Question 20:** App.R. 20 and Loc.R. 4 allows for the imposition of sanctions. Since 1989, sanctions have been rarely imposed. A case has never been dismissed as a sanction. In the rare instance a sanction is imposed, the attorney fee cost for an unexcused failure to show for mediation has been awarded to the attending counsel and/or party.

DD 1-24-12

**Question 21:** Types of cases mediated. Settlement percentages per type is unknown:

Commercial cases/LLC/Partnership/UCC (20%);  
Breach of Contract (20%);  
Foreclosure cases (currently 10%);  
Domestic Relations Decree (7.5%);  
Domestic Relations Post-Decree (10%)  
Range of Tort Cases (12.5%)  
Administrative Appeals (5%)  
Probate Contests (2.5%)  
Landlord-Tenant (5%)  
Creditor-Debtor (7.5%)

**Question 22:** No civil cases are mandatorily excluded from mediation without first examination and consideration upon review of the newly-filed notice of appeal; the appellate docketing statement; and the trial court judgment and decision or opinion; and trial court docket entries.

**Question 23:** No; however, the appellate services provided have always strived to tailor themselves to meet the historical changes in the statutory and case law; the current practices and trends impacting the bar; the ongoing motivating interests of the parties; and the dynamic external environment impacting risk factors, as well as economic and non-economic "climates" impacting litigants, the bar, and the judiciary.

**Question 24:** Mediating 5,415 civil cases from November 1, 1989 through December 31, 2011, of which 2,966 have been settled or otherwise dismissed (54.8%); and 2,417 cases were not dismissed (44.6%) and remained at final impasse; with 32 (0.6%) cases ongoing in the appellate process due to the ongoing, excellent support and collaborative partnership between both bench and bar, and the litigants we serve on a daily basis.

**Question 25:** The ongoing challenge of this and any appellate mediation program is to continue to meet the daily primary and motivating interests and concerns of the parties and litigants so that the ongoing bench-bar collaborative partnership remains as efficient and effective as possible in light of an ever-changing legal, business, economic, social and technological environments.

**Question 26:** It is a premise of the appellate mediation program and procedures that every appellate case which is voluntarily resolved and dismissed results in higher client and litigant satisfaction, while allowing the 8 judges of this court to utilize and focus their limited judicial resources to those civil and administrative cases in which counsel and the parties seek an "adjudicated outcome" versus a "mediated negotiated outcome" resulting in a "win-win", mutually beneficial appellate mediation procedures for both bench and bar, and the litigants we serve in the courthouse daily. The appellate mediation procedures are just one of many innovative and dynamic methods (use of magistrates, case management techniques, etc.) the Tenth District Court of Appeals effectively, efficiently, and productively utilizes to meet its dynamic case-load sitting in Columbus, Ohio.

DD 1-24-12

**Question 27:** Attached please find the following:

- A. Copy of App.R. 20
- B. Copy of Loc.R. 4
- C. Copy of December Statistical 2011 Report
- D. Copy of Notice of In Person Mediation
- E. Copy of Notice of Telephone Mediation
- F. Copy of a Memorandum which accompanies each notice of appellate mediation

**Question 28:** The Court's appellate mediation procedures has been informally yet closely examined periodically since its inception in 1989 by the Ohio Supreme Court and its ADR Committee and various courts and other state-wide and local bar associations, individuals, groups, and entities in the state of Ohio and nationwide over the past 22 years. The Tenth District Court internally monitors the appellate mediation procedures and processes on a daily, monthly and yearly basis.

Mediation Program Name:

Court: Tenth District Court of Appeals, aka Franklin County Court of Appeals, Columbus, Ohio

Court Case Jurisdiction: Franklin County, Ohio and state-wide jurisdiction in limited administrative matters as well as suits filed against the state of Ohio at the Court of Claims and also "original writ actions."

Court Geographic Jurisdiction: Franklin County Ohio & limited state-wide jurisdiction

Name of Mediation Program Director/Administrator: David A. Doyle, Esq.

Address: Tenth District Court of Appeals  
373 South High Street, 24th Floor  
Columbus, OH 43215

Telephone: (614) 525-6083 – Ask for Ms. Christina Adkins, Mr. Doyle's Personal Assistant

E-mail: [dadoye@franklincountyohio.gov](mailto:dadoyle@franklincountyohio.gov)

Website: [www.tenthdistrictcourt.org](http://www.tenthdistrictcourt.org)

  
1/24/12

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1/24/12

Name David A. Doyle, Esq.

Signature David A. Doyle Esq.

Title Appellate Mediator

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone (410) 260-3715, fax (410), 260-1547. Mailed & e-mailed on 1/24/12.

**App R 18 Filing and service of briefs****(A) Time for serving and filing briefs**

Except as provided in App. R. 14(C), the appellant shall serve and file the appellant's brief within twenty days after the date on which the clerk has mailed the notice required by App. R. 11(B). The appellee shall serve and file the appellee's brief within twenty days after service of the brief of the appellant. The appellant may serve and file a reply brief within ten days after service of the brief of the appellee.

**(B) Number of copies to be filed and served**

Four copies of each brief shall be filed with the clerk, unless the court by order in a particular case shall direct a different number, and one copy shall be served on counsel for each party separately represented. If the court by local rule adopted pursuant to App. R. 13 permits electronic filing of court documents, then the requirement for filing of copies with the clerk required in this division may be waived or modified by the local rule so adopted.

**(C) Consequence of failure to file briefs**

If an appellant fails to file the appellant's brief within the time provided by this rule, or within the time as extended, the court may dismiss the appeal. If an appellee fails to file the appellee's brief within the time provided by this rule, or within the time as extended, the appellee will not be heard at oral argument except by permission of the court upon a showing of good cause submitted in writing prior to argument; and in determining the appeal, the court may accept the appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action.

(Adopted eff. 7-1-71; amended eff. 7-1-82, 7-1-01)

**Commentary****Staff Notes**

2001:

**Rule 18(B) Number of copies to be filed and served**

The amendments to this rule were part of a group of amendments that were submitted by the Ohio Courts Digital Signatures Task Force to establish minimum standards for the use of information systems, electronic signatures, and electronic filing. The substantive amendment to this rule was the addition of the last sentence of division (B).

As part of this electronic filing and signature project, the following rules were amended effective July 1, 2001: Civil Rules 5, 11, and 73; Criminal Rule 12; Juvenile Rule 8; and Appellate Rules 13 and 18. In addition, Rule 26 of the Rules of Superintendence for Courts of Ohio was amended and Rule of Superintendence 27 was added to complement the rules of procedure. Superintendence Rule 27 establishes a process by which minimum standards for information technology are promulgated, and requires that courts submit any local rule involving the use of information technology to a technology standards committee designated by the Supreme Court for approval.

**App R 19 Form of briefs and other papers****(A) Form of briefs**

Briefs may be typewritten or be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. Carbon copies of briefs may not be submitted without permission of the court, except in behalf of parties allowed to proceed in forma pauperis. All printed matter must appear in at least a twelve point type on opaque, unglazed paper. Briefs produced by standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text except quoted matter which shall be single spaced. Where necessary, briefs may be of such size as required to utilize copies of pertinent documents.

Without prior leave of court, no initial brief of appellant or cross-appellant and no answer brief of appellee or cross-appellee shall exceed thirty-five pages in length, and no reply brief shall exceed fifteen pages in length, exclusive of the table of contents, table of cases, statutes and other authorities cited, and appendices, if any. A court of appeals, by local rule, may adopt shorter or longer page limitations.

The front covers of the briefs, if separately bound, shall contain: (1) the name of the court and the number of the case; (2) the title of the case [see App. R. 11(A)]; (3) the nature of the proceeding in the court (e.g., Appeal) and the name of the court below; (4) the title of the document (e.g., Brief for Appellant); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed.

**(B) Form of other papers**

Applications for reconsideration shall be produced in a manner prescribed by subdivision (A). Motions and other papers may be produced in a like manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced except quoted matter which shall be single spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the case number and a brief descriptive title indicating the purpose of the paper.

(Adopted eff. 7-1-71; amended eff. 7-1-72, 7-1-97)

**App R 20 Prehearing conference**

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a

prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

(Adopted eff. 7-1-71)

### App R 21 Oral argument

#### (A) Notice of argument

The court shall advise all parties of the time and place at which oral argument will be heard.

#### (B) Time allowed for argument

Unless otherwise ordered, each side will be allowed thirty minutes for argument. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

#### (C) Order and content of argument

The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

#### (D) Cross and separate appeals

A cross-appeal or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If separate appellants support the same argument, they shall share the thirty minutes allowed to their side for argument unless pursuant to timely request the court grants additional time.

#### (E) Nonappearance of parties

If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

#### (F) Submission on briefs

By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

#### (G) Motions

Oral argument will not be heard upon motions unless ordered by the court.

#### (H) Authorities in briefs

If counsel on oral argument intends to present authorities not cited in his brief, he shall, prior to oral argument, present in writing such authorities to the court and to opposing counsel.

(Adopted eff. 7-1-71; amended eff. 7-1-72, 7-1-76)

### App R 22 Entry of judgment

#### (A) Form

All judgments shall be in the form of a journal entry signed by a judge of the court and filed with the clerk.

#### (B) Notice

When a decision is announced, the clerk shall give notice thereof by mail to counsel of record in the case.

#### (C) Time

Unless further time is allowed by the court or a judge thereof, counsel for the party in whose favor an order, decree or judgment is announced shall, within five days, prepare the proper journal entry and submit the entry to counsel for the opposite party. Counsel for the opposite party shall within five days after receipt of the entry (1) approve or reject the entry and (2) forward the entry to counsel for the prevailing party for immediate submission to the court.

#### (D) Objections

All objections to proposed journal entries shall be in writing, and may be answered in writing. Such entry as the court may deem proper shall be approved by the court, in writing, and filed with the clerk of the court for journalization. The provisions of this rule shall not be deemed to preclude the court from sua sponte preparing and filing with the clerk for journalization its own entry. No oral arguments will be heard in the settlement of journal entries.

#### (E) Filing

The filing of a journal entry of judgment by the court with the clerk for journalization constitutes entry of the judgment.

(Adopted eff. 7-1-71; amended eff. 7-1-72)

### App R 23 Damages for delay

If a court of appeals shall determine that an appeal is frivolous, it may require the appellant to pay reasonable expenses of the appellee including attorney fees and costs.

(Adopted eff. 7-1-71)

### App R 24 Costs

(A) Except as otherwise provided by law or as the court may order, the party liable for costs is as follows:

(1) If an appeal is dismissed, the appellant or as agreed by the parties.

COURT OF APPEALS OF OHIO  
TENTH DISTRICT COURT OF APPEALS  
LOC.R. 4 APPELLATE MEDIATION CONFERENCE PROCEDURES

Pursuant to App.R. 20 and Loc.R. 4, the Court conducts appellate mediation conferences on appeal to encourage and facilitate the settlement and resolution of civil and administrative appeals early in the appellate process. Cases are scheduled by the Court and may be scheduled at the request of one (1) or more parties or counsel. The following are some commonly asked questions presented for your assistance.

◆ What cases are eligible for Loc.R. 4 appellate mediation conferences? Loc.R. 4 provides that all civil and administrative appeals are eligible for a mediation; however, only selected or nominated appeals are mediated.

◆ How are counsel advised that their appeal has been selected for a mediation conference? Counsel receive a Notice of Loc.R. 4 Conference advising them of the date and time of the conference, whether it is to be held by telephone or in person, and how they and their clients are to prepare.

◆ Why are mediation conferences scheduled shortly after the notice of appeal is filed? Loc.R. 4 mediations are held shortly after the notice of appeal is filed so that resolution of the appeal or settlement of the case (sometimes global settlement) can be explored prior to the parties incurring further cost and expense on appeal. It has been the experience of the program that the filing of briefs dramatically reduces the likelihood that the parties will be able to reach a mutually agreed upon resolution.

◆ Are the Loc.R. 4 appellate mediation conferences conducted in person or by telephone? When all participants reside in the Columbus metropolitan area, Loc.R. 4 conferences are typically held at the Courthouse. However, mediation conferences are often conducted by telephone if one of the participants resides outside of the metropolitan area or other factors dictate that counsel would be better served by a telephone conference. Experience shows that telephone mediation conferences have been equally effective at fostering settlements. The telephone conferences are initiated by the Conference Attorney who has six (6) telephone lines. It is important to note that telephone mediation conferences are afforded the same consideration as in person mediation conferences.

◆ Are the times on appeal suspended upon notice of a Loc.R. 4 conference? No. The times on appeal continue as usual including briefs. However, upon motion filed with the clerk of the Court of Appeals on the 23rd floor (614) 525-3624, the court will consider extending the times on appeal in short increments if conducive to settlement and helpful to the parties <http://fcdcfcs.co.franklin.oh.us/CaseInformationOnline/>. Do not prepare entries with your motion; the Court drafts its own. You may also follow-up on the status of any motion by contacting Mr. Doyle's Secretary, Christina Adkins, at (614) 525-6083.

◆ What if I have an unavoidable conflict with the scheduled date and time? If you need to reschedule because of a previously scheduled court appearance, planned vacation or unforeseen emergency, please call the mediation conference secretary, Christina Adkins at (614) 525-6083. Alternative dates and times will be provided to you. It is the duty of the rescheduling attorney to contact all other counsel on the case to arrive at a mutually agreeable date and time and then to promptly notify the conference mediation secretary of the rescheduled date and time. Rescheduled cases are typically held within fourteen (14) days of the originally scheduled conference. Rescheduling a case more than once is looked upon with great disfavor. Appellate matters take precedent over trial court matters.

◆ Who conducts the Loc.R. 4 appellate mediation conferences? In October 1989, the court appointed David A. Doyle, Esq., to administer the settlement conference program and to conduct the Loc.R. 4 conferences. Since 1989, Mr. Doyle, as Conference Attorney & Appellate Mediator, has mediated over 5,000 cases encompassing a broad range of civil and administrative cases with a dismissal rate of about 55%. Mr. Doyle also has considerable experience as a trial court mediator at the state trial court and federal district court levels since 1990.

◆ Is participation in Loc.R. 4 mediation conferences optional? No. Participation in Loc.R. 4 mediation conference is mandatory whether the appeal was scheduled by the Court or at the request of a party. However, counsel may contact Mr. Doyle by telephone or e-mail to discuss the issue of cancellation, though it is rarely granted, even where all sides agree.

◆ Must each party's lead attorney attend mediation? Yes. It is critical that each party be represented at the Loc.R. 4 conference by an attorney who is not only conversant with the case, but is the attorney on whose advice the party relies. If more than one attorney meets these criteria, either one may represent the client in the Loc.R. 4 mediation conference.

◆ Are the parties required to attend the mediation? If the notice indicates that client attendance is mandatory, the clients must be present with counsel at the prehearing mediation conference. If clients are not required to attend the initial conference, parties or their designated representatives with full settlement authority shall, at minimum, be available by telephone for the duration of the mediation to facilitate the

Settlement discussions. However, parties are often required to participate in a follow-up conference or in a private caucus with their counsel and the Conference Attorney in the context of the ongoing mediation. Mr. Doyle encourages active client participation when helpful or conducive to the settlement discussions.

◆ How long do the mediation conferences last? On average, the mediation conferences typically last approximately sixty to ninety minutes. It is not unusual, however, for the mediation conferences to go beyond one (1) hour, and the conference attorney & appellate mediator will afford counsel and the parties as much time as necessary to accomplish the purposes of the mediation, but likewise is considerate of the time constraints and other commitments of counsel and the parties beyond the 60-90 minute mark.

◆ What preparation is required of counsel? Counsel are to consult with their clients prior to the Loc.R. 4 mediation and obtain the requisite settlement authority. Counsel will be asked about the range of outcomes on appeal irrespective of the degree of probability of that outcome. Counsel are to be prepared to fully explore in good faith all options, avenues, and possibilities which might lead to a mutually acceptable resolution of the case. Counsel should also review their factual and legal positions prior to the mediation. Discussion of settlement is not necessarily limited to the appeal itself. If settlement of the appeal will not dispose of the entire case, or, if related litigation is pending or anticipated in other forums, counsel are invited and encouraged to explore the possibility of a global settlement.

◆ What takes place at the Loc.R. 4 mediation conference? While Loc.R. 4 mediation conference procedures are official proceedings of the Court, they are conducted in a relatively informal manner. Discussions are typically conversational rather than argumentative. Initially, procedural issues and questions are addressed. The primary substantive issues and anticipated assignments of error are then discussed in the context of appellate standards of review. Thereafter, resolution is actively explored through the mediation process. The mediation focuses on the possible outcomes on appeal; the risks and costs of further litigation; the key interests and leading motivations of the parties; and the potential benefits gained through resolution of the appeal or settlement of the entire case. Mr. Doyle, as Appellate Mediator, typically meets jointly with counsel and the parties and then meets separately in caucus with each side in his role as mediator. On appeal, unless prior discussions after the filing of the notice of appeal, it is the appellant or appellants' responsibility to put forth the initial demand, offer, or proposal to resolve the appeal and underlying case, if necessary. He may shuttle between the parties and their counsel or meet with counsel only. Settlement demands, offers and proposals are thoroughly discussed. Resolution may or may not be reached during the initial conference. Following an initial conference, Mr. Doyle typically initiates further discussions by telephone, letter or e-mail or will schedule follow-up conferences if helpful. Counsel will negotiate directly, as well. By the conclusion of the Loc.R. 4 mediation conference process, the parties have either reached a resolution or have identified the remaining obstacles and areas of impasse preventing resolution.

◆ What are the roles of the Conference Attorney & Appellate Mediator in the Loc.R. 4 appellate mediation process? As indicated above, procedural questions and issues are addressed including potential jurisdictional problems and then the anticipated assignments of error and primary legal issues are raised and discussed. Mr. Doyle then serves as a mediator and he may perform a variety of roles as may be conducive to the settlement process. He may act as a facilitator, moderator or intermediator. He may act as a sounding board or as a reality check or even cajole, test or challenge positions of counsel and the parties, typically in a private caucus, but sometimes jointly. Typically, however, he will encourage active yet neutral analysis rather than arguments and accusations. He will assist as needed in the generation of possible options for resolution. As mediator, he will work closely, as needed, with counsel and the parties in facilitating impasse negotiations and encouraging collaborative problem-solving in the search for mutually agreeable terms. Throughout the appellate mediation conference proceedings, Mr. Doyle, while active in the discussions and questioning, remains impartial, but may challenge, in his experience, tenuous, unreasonable or bad faith positions and proposals.

◆ Are Loc.R. 4 mediations confidential and are the mediation communications privileged? The Tenth District's Loc.R. 4(D)(3) states that except to the extent disclosed in a prehearing conference order, "information contained in statements or comments made during prehearing conference shall be regarded as disclosed solely for purposes of settlement negotiations, and shall neither be treated as admissions, nor as limiting the disclosing party in presenting or arguing that party's case." In addition, the enacted Uniform Mediation Act (UMA) effective October 29, 2005, is set forth in R.C. 2710.01 to R.C. 2710.10 and addresses, along with other matters, the issues of confidentiality and privilege. R.C. 2710.07 states that, "Except as provided in sections 121.22 and 149.43 of the Revised Code, mediation communications are confidential to the extent agreed by the parties or provided by other sections of the Revised Code or rules adopted under any section of the Revised Code." The Conference Attorney & Appellate Mediator, Mr. Doyle, will not report or communicate the substance of any settlement

discussions or "mediation communications" to the court. The Uniform Mediation Act also addresses the issue of privilege referring to when mediation communications of mediation parties, the mediator, and nonparty participants, cannot be discussed or testified to in a subsequent court proceeding. Counsel are encouraged to review the entire Uniform Mediation Act R.C. 2710.01 to R.C. 2710.10 prior to your appellate mediation.

◆ Do judges of the Court of Appeals know what transpires at Loc.R. 4 mediation conferences? The court does not know what substantively has transpired at the appellate mediation conference and any settlement discussions or negotiations which have taken place are not revealed to the Court. The appellate mediation process provides appellate counsel and the parties with a minimal risk and low cost environment in which counsel and the parties can actively explore options and avenues of resolution which are consistent with the best interests of their clients. If no agreements are reached, the case is absolutely unaffected and those in the court's decisional process that might follow know nothing about the substantive mediation discussions.

◆ How can I best use the Loc.R. 4 mediation conference to benefit my client? Recognize that the Loc.R. 4 appellate mediation conference procedures provide a short window of opportunity to achieve a favorable outcome consistent with your client's overall interests and risks. While maintaining your role as an advocate, understand that the appellate mediation conference is essentially cooperative rather than adversarial. Take advantage on appeal of the opportunity to talk constructively and confidentially with counsel for the other parties. Listen closely to what the other participants have to say. Try to be as candid as possible without posturing. Be persuasive yet open to persuasion. Keep in mind that your views and the views of opposing counsel about the case may change during the course of the appellate mediation process which may lead to additional avenues and options for resolution and mutual gain. Likewise, a parties' economical and personal circumstances may change over the months of an appeal. In light of the above, be prepared to both initiate demands, offers and proposals as appellant's counsel and be prepared to specifically accept, respond or counter-offer as appellee's counsel.

◆ How can a Loc.R. 4 mediation conference be requested? Counsel may request a Loc.R. 4 mediation conference by calling or writing the Conference Attorney & Appellate Mediator, David A. Doyle at the Court of Appeals, Tenth Appellate District, Franklin County Courthouse, 373 S. High Street, 24th Floor, Columbus, Ohio 43215, telephone No. (614) 525-4023, e-mail (dadoyle@franklincountyohio.gov) or fax (614) 525-7249. Requests for mediation conferences can also be directed to Court Administrator, Jack Kullman, Jr., at the same address or telephone number (614) 525-3580. Further, counsel may request a conference by formal motion filed with the Court. Counsel will be advised by notice should a mediation conference be scheduled, but the times continue as usual on appeal and are not tolled or suspended.

#### RULE 4. PREHEARING CONFERENCE PROCEDURE

(A) Applicability. This rule applies to all civil and administrative appeals in this court.

(B) Transmission of Documents from Clerk of the Trial Court.

Upon the filing of a notice of appeal, the clerk of the trial court or the administrative agency shall forthwith transmit a copy of the notice of appeal to the clerk of the court of appeals, together with a copy of: (a) all filings by appellant pursuant to App.R. 9(B); (b) the docket entries; (c) the docketing statement; (d) the judgment or order sought to be reviewed; and (e) the opinion, if any, and findings of fact and conclusion of law, if any.

(C) Response by Appellee or Cross-Appellee. Within seven days after service of appellant's or cross-appellant's docketing statement, each appellee may, at his option, file with the clerk of the court of appeals, with service on all other parties, four copies of a statement report not to exceed two pages, containing any information which may assist the court and parties in clarifying the issues or settling the appeal or cross-appeal.

(D) Prehearing Conference.

(1) Civil and administrative appeals to which this Rule applies shall be reviewed by a staff attorney known as a conference attorney, to determine if a prehearing conference, pursuant to App.R. 20, would be of assistance to the court or parties. Any party may request a prehearing conference; however, the request need not be granted.

(2) If an appeal is selected for conference, upon seven days notice from the conference attorney, the attorneys, and the parties if requested, shall attend a prehearing conference before a judge, or the conference attorney, to be held within fourteen days after the filing of the notice of appeal, or as soon thereafter as practicable, to consider the possibility of settlement, the simplification of issues, and such other matters as may aid in the disposition of the proceedings by the court. Any case selected for conference which has been assigned to the accelerated calendar shall be removed from the accelerated calendar and assigned to the regular calendar.

(3) Except to the extent disclosed by the prehearing conference order entered pursuant to Section 5 of this rule, information contained in statements or comments made during the prehearing conference shall be regarded as disclosed solely for purposes of settlement negotiations, and shall neither be treated as admissions, nor as limiting the disclosing party in presenting or arguing that party's case.

(E) Prehearing Conference Order. At the conclusion of the prehearing conference, the judge, or the presiding judge upon recommendation of the conference attorney, may enter an order setting forth the actions taken and the agreements reached, which order shall govern the subsequent course of proceedings, unless modified by the court.

(F) Non-Compliance Sanctions. If a party or attorney fails to comply with the provisions of the rule or the provisions of the prehearing conference order, the court may assess reasonable expenses caused by the failure, including attorney fees; assess all or a portion of the appellate costs; or dismiss the appeal.

Updated: July 2011

**TO: Judges & Jack Kullman, Court Administrator**  
**FROM: Dave Doyle, Conference Attorney & Appellate Mediator**  
**DATE: January 10, 2012**  
**RE: December 2011 Mediation Report & Statistical Summaries**

**NARRATIVE SUMMARY OF DECEMBER 2011 STATISTICAL REPORT**

**\*From November 1, 1989 through December 31, 2011, 5,415 civil appeals have entered into the appellate mediation process, of which 2,966 cases have been settled or otherwise dismissed (54.8%), and 2,417 cases were not dismissed and remained at final impasse (44.6%). Thirty-two (32) cases remain in the appellate mediation process (0.6%). When combined, these cases total 100% of the appellate mediation cases. (See, Statistical Summary November, 1989 through December, 2011 attached).**

**\*Over the last completed 5 years from January 1, 2006, through December 31, 2010 (2011 still has 32 ongoing mediation cases), 1,036 civil appeals and mandamus actions have entered the appellate mediation process, of which 562 cases have been settled or otherwise dismissed (54.2%), and 474 cases were not dismissed and remained at final impasse (45.8%). (See, Statistical Summary November, 1989 through December, 2011 attached).**

**\*Over the past 24 months, 407 civil appeals and mandamus actions have entered the appellate mediation process, of which 177 cases have been either settled or otherwise dismissed (43.4%); 198 cases remain at final impasse (48.7%); and 32 cases remain in ongoing appellate mediations (7.9%). (See 24 Month Report attached).**

**\*In the last full quarter mediated from October 1, 2011 through December 31, 2011, 49 civil and mandamus actions have entered the appellate mediation process, of which 14 cases have been either settled or otherwise dismissed; 7 cases remain at impasse; and 28 cases remain in ongoing appellate mediation (part of overall, ongoing 32 appellate mediation caseload). (See Two-Year Quarterly Report attached).**

**LEGEND:**

KO - No Resolution Following Mediation  
 S - Settled Per Mediation/Dismissal to Follow  
 O - Status Ongoing in Mediation Process  
 D - Dismissed Per Mediation  
 D/J - Dismissed/Jurisdictional Grounds  
 B - Bankruptcy Stay Following Mediation  
 PAM - Post-Argument Mediation

**COURT:**

M -Municipal  
 CPG -Common Pleas General  
 CPD -Common Pleas Domestic  
 CPP -Common Pleas Probate  
 CC -Court of Claims  
 DA -Direct Appeal  
 MAND-Mandamus

**14 Civil, 2 Post-Argument & 1 Mandamus Mediations (12/01/11 – 12/31/11)**

<b>CASE NO.</b>	<b>CASE NAME</b>	<b>TRIAL COURT</b>	<b>NOTICE OF APPEAL FILED</b>	<b>CONF SCHED.</b>	<b>CONF RESCH.</b>	<b>STATUS</b>
11-427	Rife v. Rife, II.	CPD/ PAM	5/10/11	12/16/11		KO
11-518	Jones v. Greyhound Lines, Inc.	CPG/ PAM	6/10/11	12/28/11		CN
11-810	StXR Daily v. Buehrer, Adm'r., B.W.C.	MAND	9/22/11	12/12/11		CN
11-838	Stoner v. Salon Lofts, LLC	CPG	9/29/11	11/09/11	12/15/11	CN
11-946	Katz Interests v. Music Factory	CPG	11/01/11	12/05/11		KO
11-947	Graham v. Katz	CPG	11/01/11	12/05/11		KO
11-977	Camp v. Star Leasing Co.	CPG	11/09/11	12/06/11		CN
11-997	Slaughter nka Dooling v. Slaughter	CPG	11/14/11	12/19/11		CN
11-998	Honzell v. Nationwide Ins. Co.	CPG	11/14/11	12/20/11		CN
11-1000	ELM Investments v. BP Exploration	CPG	11/15/11	12/21/11	12/20/11	CN
11-1009	Carrozza v. Landis	CPG	11/16/11	12/22/11		CN
11-1010	Encompass Indemnity v. Bates	CPG	11/17/11	12/21/11		CN
11-1011	Wells Fargo Bank v. Hartley	CPG	11/17/11	12/21/11		D
11-1013	Ojerinde v. Felbry College	CPG	11/17/11	12/20/11		D
11-1016	Chase Home Finance v. Harmon	CPG	11/18/11	12/19/11		CN
11-1031	Evans v. Evans (aka Ferrell)	CPG	11/25/11	12/21/11		CN
11-1033	Federal Nat'l Mortgage v. Slavin	CPG	11/25/11	12/20/11		CN

24 MONTH APPELLATE MEDIATION STATISTICAL SUMMARY – (JANUARY 2010 – DECEMBER 2011)\*

MONTH – LOC. R. 4 PREHEARING MEDIATION CONFERENCES	TOTAL CASES	TOTAL COMBINED SETTLED/ DISMISSED PER LOC. R. 4 MEDIATION	(DISMISSALS PER LOC.R. 4 MEDIATION)	(SETTLED PENDING DISMISSAL ENTRY PER LOC.R. 4 MEDIATION)	(DISMISSED ON JURISDICTIONAL GROUNDS FOLLOWING LOC.R. 4 MEDIATION)	ONGOING IN LOC.R. 4 MEDIATION (MEDIATION CASELOAD)	NO RESOLUTION FOLLOWING LOC.R. 4 MEDIATION (IMPASSE)
January 2010	11	3	3	0	0	0	8
February 2010	12	6	5	0	1	0	6
March 2010	20	8	8	0	0	0	12
April 2010	14	7	7	0	0	0	7
May 2010	20	11	11	0	0	0	9
June 2010	12	6	6	0	0	0	6
July 2010	15	4	3	0	1	0	11
August 2010	18	11	11	0	0	0	7
September 2010	18	5	5	0	0	0	13
October 2010	13	8	6	0	2	0	5
November 2010	17	8	8	0	0	0	9
December 2010	20	12	12	0	0	0	8
January 2011	23	9	9	0	0	0	14
February 2011	19	7	7	0	0	0	12
March 2011	17	9	8	0	1	0	8
April 2011	21	13	13	0	0	0	8
May 2011	16	5	4	0	1	1	10
June 2011	20	7	6	0	1	0	13
July 2011	12	6	5	1	0	0	6
August 2011	24	13	11	1	1	1	10
September 2011	16	5	4	0	1	2	9
October 2011	17	6	3	2	1	8	3
November 2011	15	6	2	3	1	8	1
December 2011	17	2	2	0	0	12	3
<b>Total No. *</b>	<b>407</b>	<b>177</b>	<b>(159)</b>	<b>(7)</b>	<b>(11)</b>	<b>32</b>	<b>198</b>
<b>Total Percentage*</b>	<b>100%</b>	<b>43.4%</b>	<b>(39%)</b>	<b>(1.7%)</b>	<b>(2.7%)</b>	<b>7.9%</b>	<b>48.7%</b>

Summary Notes:

\*The three purposes of Loc.R. 4 Appellate Mediation Conferences are to address motions and procedural matters including potential jurisdictional issues and defects and to provide procedural assistance to counsel throughout the pendency of the appeal; to identify, discuss and narrow the anticipated assignments of error and substantive issues (mediations are held prior to briefing usually within thirty (30) days after the filing of the notice of appeal); and to explore voluntary resolution and dismissal of the appeal in the confidential forum of mediation. The mediation may continue days, weeks, and sometimes months after the initial mediation conference. Other Ohio appellate courts (1<sup>ST</sup>, 4<sup>TH</sup>, 6<sup>TH</sup>, 8<sup>TH</sup>, 9<sup>TH</sup>, 11<sup>TH</sup> & 12<sup>TH</sup>) utilize or have previously utilized appellate mediation. Also, the Ohio Supreme Court, and the U.S. Sixth Circuit Court of Appeals, after which our mediation procedures are patterned, share the same three (3) purposes with the primary focus and effort on resolution and dismissal of appeals through mediation conducted in a confidential forum. The other Ohio appellate courts' mediation procedures are patterned after the 10<sup>th</sup> District's mediation procedures. This author assisted each of these appellate courts and the Ohio Supreme Court with the implementation and start-up of their mediations.

\*Potential procedural problems including jurisdictional defects or issues are initially addressed at the outset of each Loc.R. 4 prehearing mediation conference. Potential settlement or resolution of an appeal or underlying case are still actively explored even where a jurisdictional problem may exist, such as for example, an appeal from a discovery dispute; a multiple party/claim dispute where the judgment lacks a Civ.R. 54(B) designation; a decision but no judgment entry has been entered; or a timeliness question arises. The parties and counsel benefit from promptly addressing jurisdictional issues before incurring the time and expense of briefing. It also should be noted some of those cases are resolved without further or subsequent intervention by the trial or appellate court.

\*\*\***Total Combined Settled/Dismissed per Loc.R. 4 Mediation**” category is arrived at by adding the columns “Dismissals per Loc.R. 4 Mediation”; Settled Pending Dismissal Entry per Loc.R. 4 Mediation”; and “Dismissed on Jurisdictional Grounds Following Loc.R. 4 Mediation.” Cases are counted as dismissed in the month and year initially mediated. In other words, for example, 255 cases were mediated in 2006 of which 145 cases have been dismissed following and pursuant to Loc.R. 4 mediation.

TWO YEAR QUARTERLY SUMMARY THROUGH QUARTER 4 OF 2011

QUARTER – LOC. R. 4 PREHEARING MEDIATION CONFERENCES	TOTAL CASES	TOTAL COMBINED SETTLED/DISMISSAL PER LOC.R. 4 MEDIATION*	(DISMISSALS PER LOC.R. 4 MEDIATION)	(SETTLED PENDING DISMISSAL ENTRY PER LOC.R. 4 MEDIATION)	(DISMISSED ON JURISDICTIONAL GROUNDS FOLLOWING LOC.R. 4 MEDIATION)	ONGOING IN LOC.R. 4 (MEDIATION CASELOAD)	NO RESOLUTION FOLLOWING LOC.R. 4 MEDIATION
QUARTER 1 – 2010	43	17	16	0	1	0	26
QUARTER 2 – 2010	46	24	24	0	0	0	22
QUARTER 3 – 2010	51	20	19	0	1	0	31
QUARTER 4 – 2010	50	28	26	0	2	0	22
QUARTER 1 – 2011	59	25	24	0	1	0	34
QUARTER 2 – 2011	57	25	23	0	2	1	31
QUARTER 3 – 2011	52	24	20	2	2	3	25
QUARTER 4- 2011	49	14	7	5	2	28	7

\*Total Combined Settled/Dismissed per Loc.R. 4 Mediation” category is arrived at by adding the columns “Dismissals per Loc.R. 4 Mediation”; “Settled Pending Dismissal Entry per Loc.R. 4 Mediation”; and “Dismissed on Jurisdictional Grounds Following Loc.R. 4 Mediation.” Cases are counted as dismissals in the month and year initially mediated.

**\*LOC.R. 4 PREHEARING MEDIATION CONFERENCE STATISTICAL SUMMARY THROUGH DEC. 2011**

LOC.R. 4 PREHEARING MEDIATION CONFERENCES:	TOTAL CASES IN LOC.R. 4 MEDIATION	ONGOING IN MEDIATION PROCESS	NO RESOLUTION FOLLOWING LOC.R. 4 MEDIATION	TOTAL COMBINED SETTLED AND DISMISSED PER LOC.R. 4 MEDIATION	COMBINED SETTLEMENT/DISMISAL RATE PER LOC.R. 4 MEDIATION
Nov. 1989 – Oct. 1990	263	0	104	159	60.5%
Nov. 1990 – Oct. 1991	236	0	88	148	62.7%
Nov. 1991 – Oct. 1992	302	0	123	179	59.3%
Nov. 1992 – Oct. 1993	299	0	123	176	58.9%
Nov. 1993 – Oct. 1994	276	0	103	173	62.7%
Nov. 1994 – Oct. 1995	251	0	93	158	62.9%
Nov. 1995 – Oct. 1996	278	0	122	156	56.1%
Nov. 1996 – Oct. 1997	255	0	119	136	53.3%
Nov. 1997 – Dec. 1998	286*	0	125*	161*	56.3%*
Jan. 1999 – Dec. 1999	244	0	111	133	54.5%
Jan. 2000 – Dec. 2000	247	0	121	126	51%
Jan. 2001 – Dec. 2001	231	0	121	110	47.6%
Jan. 2002 – Dec. 2002	259	0	137	122	47.1%
Jan. 2003 – Dec. 2003	228	0	120	108	47.4%
Jan. 2004 – Dec. 2004	253	0	120	133*	52.5%
Jan. 2005 – Dec. 2005	254	0	116	138*	54.3%
Jan. 2006 – Dec. 2006	255	0	110	145*	56.8%
Jan. 2007 – Dec. 2007	246	0	104	142*	57.7%
Jan. 2008 – Dec. 2008	121	0	61	60*	49.6%
Jan. 2009 – Dec. 2009	224	0	98	126*	56.2%
Jan. 2010 – Dec. 2010	190	0*	101*	89*	46.8%
Jan. 2011 – Dec. 2011	217	32*	97*	88*	40.5%
<b>TOTAL NO. (11/89 – 12/11)</b>	<b>5,415*</b>	<b>32*</b>	<b>2,417*</b>	<b>2,966*</b>	<b>54.8%</b>

**APPELLATE MEDIATION OVERVIEW:**

\*The three purposes of Loc.R. 4 Prehearing Mediation Conferences are to address motions and procedural matters including potential jurisdictional issues and defects and to provide procedural assistance to counsel throughout the pendency of the appeal; to identify, discuss and narrow the anticipated assignments of error and substantive issues (mediations are held prior to briefing usually within thirty (30) days after the filing of the notice of appeal); and to explore voluntary resolution and dismissal of the appeal in the confidential forum of mediation. The mediation may continue days, weeks, and sometimes months after the initial mediation conference and may

include global resolutions of all litigation. Ohio appellate courts, 1<sup>ST</sup>, 4<sup>TH</sup>, 6<sup>TH</sup>, 8<sup>TH</sup>, 9<sup>TH</sup>, 10<sup>TH</sup>, 11<sup>TH</sup> & 12<sup>TH</sup> – each court presently utilizes appellate mediation), the Ohio Supreme Court, and the U.S. Sixth Circuit Court of Appeals, after which our mediation procedures are patterned, share the same three (3) purposes with the primary focus and effort on resolution and dismissal of appeals through mediation conducted in a confidential forum. The other Ohio appellate courts' mediation procedures are patterned after the 10<sup>th</sup> District's mediation procedures. This author assisted each of these appellate courts and the Ohio Supreme Court with the implementation and start-up of their mediation procedures.

#### **LOC.R. 4 PREHEARING MEDIATION CONFERENCE STATISTICAL SUMMARY NOTES**

\*November 1997 – December 1998 combine fourteen (14) months so reporting could take place on a calendar basis commencing January 1999.

\*The above chart does not include workers' compensation mandamus actions referred to mediation by the magistrates through the year ending 2002. Three hundred and thirteen (313) original mandamus actions were mediated from April 1994 through December 2002, of which 124 cases were resolved and dismissed (39.6%). The successful mediation for the first time of workers' compensation mandamus cases in 1994-1995 was an important factor in the Ohio Supreme Court implementing mediation procedures in original action cases at their Court. Since January 2003 through December 2011, 86 original mandamus actions have been referred to mediation by the magistrates and those cases have been included in the monthly and annual numbers and are reflected in the summary for the years 2003-2011.

\*Total Combined Settled and Dismissed per Loc.R. 4 Mediation" reported above of 2,966 cases (and the corresponding combined settlement/dismissal rate of 54.8%) are comprised of those cases which entered into the Loc.R. 4 prehearing mediation conference process and have been reported as settled or otherwise have been dismissed pursuant to the mediation process by court entry without judicial decision or opinion, and includes cases from 1989 through 2003 which were dismissed on jurisdictional grounds by court entry following a prehearing mediation conference. See years 2004 - 2011 immediately below.

\*In 2004, 21 of the 133 total combined mediation settled and dismissed cases noted above were entered by court entry on jurisdictional grounds (i.e., premature, lack of final order, or timeliness) following the appellate mediation conference.

\*In 2005, 14 of the 138 total combined mediation settled and dismissed cases noted above were entered by court entry on jurisdictional grounds (i.e., premature, lack of final order, or timeliness) following the appellate mediation conference.

\*In 2006, 8 of the 145 total combined mediation settled and dismissed cases noted above were entered by court entry on jurisdictional grounds (i.e., premature, lack of final order, or timeliness) following the appellate mediation conference.

\*In 2007, 13 of the 142 total combined mediation settled and dismissed cases noted above were entered by court entry on jurisdictional grounds (i.e., premature, lack of final order, or timeliness) following the appellate mediation conference.

\*In 2010, 3 of the 60 total combined mediation settled and dismissed cases noted above were entered by court entry on jurisdictional grounds (i.e., premature, lack of final order, or timeliness) following the appellate mediation conference.

\*In 2009, 8 of the 126 total combined mediation settled and dismissed cases noted above were entered by court entry on jurisdictional grounds (i.e., premature, lack of final order, or timeliness) following the appellate mediation conference.

\*In 2010, 4 of the 190 mediated cases were dismissed by court entry on jurisdictional grounds (i.e., premature, lack of final order, or timeliness) following the appellate mediation conference.

\*In 2011, 7 of the 217 mediated cases were dismissed by court entry on jurisdictional grounds (i.e., premature, lack of final order, or timeliness) following the appellate mediation conference.

\*Through December 31, 2011, 5,415 civil appeals have entered into the Loc.R. 4 appellate mediation process, of which 2,966 cases have been settled or otherwise dismissed (54.8%). In addition to those cases, 313 workers' compensation mandamus actions were mediated from April 1994 through December 2002, of which 124 cases were resolved (39.6%). Since 2003 through December 31, 2011, 86 original actions referred to mediation have been included in the monthly and annual numbers. Five newly-filed workers' compensation original actions were referred to this mediator by a magistrate in the year 2011 through December 31, 2011.

\*For uniform statistical purposes, any of the cases which settle or are otherwise dismissed in a subsequent year are counted in the preceding year in which the initial appellate mediation conference was held. In other words, settlements and dismissals are counted in the month and year the case was initially conferenced and mediated; herein 2011. This methodology is consistent with other mediation programs statewide and is utilized in the above chart.

\*Through December 31, 2011, 5,415 civil appeals have entered into the appellate mediation process of which 2,966 cases have been settled or otherwise dismissed (54.8%) and 2,417 cases were not dismissed and remained at final impasse (44.6%). Thirty-two (32) cases remain in the appellate mediation process (0.6%). When combined, these cases total 100% of Loc.R. 4 appellate mediation cases.

\*This author is a former Vice Chair of the Ohio Supreme Court ADR Advisory Committee (2008-2009) and has been a member since 1992; is a former Chair of the CBA's ADR Committee and former first Secretary of the OSBA's ADR Committee; received the 2003 Award of Merit from the Columbus Bar Association for his service in the administration of justice, and serves as a volunteer "Blue Ribbon" panel federal trial court mediator over the past twenty (20) years for the U.S. District Court, Southern District since 1991.

# Court of Appeals of Ohio

TENTH APPELLATE DISTRICT  
FRANKLIN COUNTY  
COURTHOUSE  
373 SOUTH HIGH STREET  
COLUMBUS, OHIO 43215-6313  
(614) 525-3580  
FAX (614) 525-7249

Susan Brown,  
*Presiding Judge*

William A. Klatt,  
*Administrative Judge*

Peggy Bryant  
Lisa L. Sadler  
Judith L. French  
G. Gary Tyack  
John A. Connor  
Julia L. Dorrian



COURT ADMINISTRATOR  
Jack R. Kullman Jr.

DEPUTY COURT ADMINISTRATOR  
Douglas W. Eaton

January 24, 2012

Re: Case No. 12AP-

## NOTICE OF IN PERSON APPELLATE MEDIATION CONFERENCE (DATE)

Dear Counsel:

Pursuant to Loc.R. 4, an appellate mediation conference has been scheduled with this court's Conference Attorney & Appellate Mediator, Dave Doyle, on (date). Mr. Doyle will greet you at our Court of Appeals, located at 373 S. High Street on the 24<sup>th</sup> floor lobby. Please note that the mediation conference procedures set forth in Loc.R. 4 **do not** suspend the running of time for further steps in the appeal.

There are three purposes for the mediation conference. **One** is to attempt to address and resolve any procedural problems in the case. A **second** is to identify the anticipated assignments of error and to clarify the main issues being raised on appeal. Discussions may be extensive. A **third and primary purpose** is to explore any possibilities there may be for a **settlement** of the case or resolution of the appeal. Global resolution of all matters may be explored.

All counsel are expected to come with **authority** to both **initiate** and **respond** in **specific terms** to settlement proposals that are consistent with their clients' interests. The range of potential outcomes on appeal, and in the trial court, if remanded, and the risks associated therein, along with the motivations and bases for terminating the appeal and underlying case, will be discussed in considerable detail.

Each mediation is scheduled for 60-90 minutes. However, the actual time is flexible; whatever time the parties truly require will be provided. **Counsel are encouraged to bring their clients to the mediation, otherwise they are to be available by telephone during the mediation conference. Please note the attached memorandum further explaining the mediation process.**

**Counsel addressed are understood to be the lawyers with the primary responsibility of the case and are required to participate. If the purposes of the mediation would be accomplished more effectively with different or additional lawyers, or if this date presents an unavoidable conflict with a previously-scheduled court appearance, please contact Mr. Doyle's Secretary, Christina Adkins at (614) 525-6083, immediately by telephone so that other arrangements can be made. For reference, Mr. Doyle's e-mail is: [dadoyle@franklincountyohio.gov](mailto:dadoyle@franklincountyohio.gov)**

DAVID A. DOYLE  
CONFERENCE ATTORNEY & APPELLATE MEDIATOR

cc:

# Court of Appeals of Ohio

TENTH APPELLATE DISTRICT  
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Julia L. Dorrian



COURT ADMINISTRATOR  
Jack R. Kullman Jr.

DEPUTY COURT ADMINISTRATOR  
Douglas W. Eaton

January 19, 2012

Re: Case No. 12AP-

## NOTICE OF TELEPHONE APPELLATE MEDIATION CONFERENCE (DATE)

Dear Counsel:

Pursuant to Loc.R. 4, an appellate mediation conference has been scheduled with this court's Conference Attorney & Appellate Mediator, Dave Doyle, on (date). **For everyone's convenience, it will be conducted by telephone. The call will be initiated by Mr. Doyle.** Please note that the mediation conference procedures set forth in Loc.R. 4 **do not** suspend the running of time for further steps in the appeal.

There are three purposes for the mediation conference. **One** is to attempt to resolve any procedural problems in the case. A **second** is to identify the anticipated assignments of error and to clarify the main issues being raised on appeal. Discussions may be extensive. A **third and primary purpose** is to explore any possibilities there may be for a **settlement** of the case or resolution of the appeal. Global resolution of all matters may also be explored.

All counsel are expected to come with **authority** to both **initiate** and **respond in specific terms to settlement proposals** that are consistent with their clients' interests. The range of potential outcomes on appeal, and in the trial court, if remanded, and the risks associated therein, along with the motivations and bases for terminating the appeal will be discussed in considerable detail.

Each telephone mediation conference is scheduled for one hour. However, the actual time is flexible; whatever time the parties truly require will be provided. **Counsel are encouraged to bring their clients to the mediation, otherwise they are to be available by telephone during the mediation conference. Please note the attached memorandum further explaining the mediation process.**

**Counsel addressed are understood to be the lawyers with the primary responsibility of the case and are required to participate and be prepared to both initiate and respond to each settlement demand and offer advanced. If you anticipate having no involvement on appeal as either an appellant or appellee and, accordingly, do not wish to participate in mediation, please contact Christina Adkins at (614) 525-6083.**

If the purposes of the mediation would be accomplished more effectively with different or additional lawyers, or if this date presents an unavoidable conflict with a previously-scheduled court appearance, please contact Mr. Doyle's Secretary, Christina Adkins, at (614) 525-6083, immediately by telephone so that other arrangements can be made. This office is quite reluctant to reschedule a matter more than once. Mr. Doyle's e-mail is: [dadoyle@franklincountyohio.gov](mailto:dadoyle@franklincountyohio.gov).

DAVID A. DOYLE, ESQ.  
CONFERENCE ATTORNEY & APPELLATE MEDIATOR

cc:

Survey Response

**Ohio**

11<sup>th</sup> Appellate District

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established? In 2005
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? A Local rule
3. Are mediations ordered by the court or is mediation an optional service provided upon request? Ordered by the court, but can be requested by the parties if the case is not selected.
4. When did the program begin conducting mediations? In July of 2005
5. How many civil appeals are administered by your court annually?  
In 2011, 291 civil cases were filed with the court.
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process. The Court's Administrative Counsel selects the cases for mediation.
7. How many cases were mediated in the most recent year? For the year ending December 31, 2011, 100 cases were mediated.
8. How many cases settled in mediation in the most recent year? 71 cases  
Full settlements x                      Partial settlements \_\_\_\_\_
9. How does your program define a "partial settlement?" If there are multiple parties and/or multiple issues and there is a resolution as to either one party or one issue that does not result in a settlement of the entire case.
10. Does your program offer mediation in cases with self-represented parties? Yes  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Approximately 30% Does your program employ different policies or screening in cases involving self-represented parties? No
11. Who serves as mediators in your program? How many of such mediators are currently active in your program? Our Administrative Counsel serves as the mediator. She is also the Court Administrator and a part-time Magistrate for the Court.
12. What are the required qualifications for appellate mediators in your program? Must possess a juris doctorate and have 2 to 5 years legal experience.
13. How are mediators selected or designated for a particular case? All cases selected for mediation are mediated by the Administrative Counsel.
14. Are your cases mediated by one mediator or are they co-mediated? They are mediated by one person, the Administrative Counsel.

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services. Mostly facilitative combined with neutral case evaluation, but it depends on the case.
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program. The judges are provided with a monthly report regarding the program. They have also, at times, referred cases to mediation from the bench.
17. What is the annual cost of the program? It is hard to determine the cost because the Administrative Counsel who performs the mediations also serves in two other capacities with the court.
18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program? Besides the Administrative Counsel, we have one other person performing minor clerical tasks in the administration of the appellate mediation program. However, those tasks are in addition to her other duties with the court. That person does not serve as a mediator.
19. If parties are ordered to mediation in your program, are they permitted to “opt-out” of mediation? Please describe the grounds permitted to opt-out. Yes, but they must contact the Court’s Administrative Counsel. It is at her discretion.
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe. Yes, but we have not had to impose any such sanction so far.
21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)
- |                                  |            |
|----------------------------------|------------|
| 1) <u>Contract Cases</u>         | <u>25%</u> |
| 2) <u>Domestic Cases</u>         | <u>25%</u> |
| 3) <u>Foreclosures</u>           | <u>12%</u> |
| 4) <u>Small Claims</u>           | <u>10%</u> |
| 5) <u>Administrative Appeals</u> | <u>6%</u>  |
| 6) <u>Torts</u>                  | <u>15%</u> |
| 7) <u>Probate</u>                | <u>8%</u>  |
21. If you are able to provide settlement statistics per case type, please do so. N/A

22. What types of civil cases, if any, are ineligible for mediation in your program? None
23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe. Yes, because in 2007, the Administrative Counsel became a part-time Magistrate for the Court and in 2009, the Administrative Counsel/Magistrate also became the Court Administrator.
24. What do you rate as the most significant successes of your appellate mediation program to date? The settlement rate and the satisfaction of the parties.
25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country? None.
26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources? The program has reduced the number of cases that continue through the remainder of the appellate process and has disposed of cases prior to the issuance of an opinion from the judges.
27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program. See the local rule (below).

#### **RULE 20. PREHEARING CONFERENCE; MEDIATION**

Under Ohio App.R. 20, this court's prehearing and mediation conference procedure will operate as follows:

**(A) Prehearing Conference Scheduling.**

(1) Civil and administrative appeals will be reviewed by this court's Administrative Counsel promptly after the filing of the notice of appeal to determine whether a prehearing conference under Ohio App.R. 20 would assist the court or the parties. In addition, any party may telephone the court's Administrative Counsel to request a prehearing conference to be held or to be canceled. Such request will be confidential if the requesting party desires.

(2) If an appeal is selected for conference, upon twenty-one days notice from the court, unless excused, counsel and parties (including insurance adjusters) are required to attend a prehearing conference before the court's Administrative Counsel when possible in the county of origin. Persons excused in advance by the Administrative Counsel from attending in person shall be available by telephone. At the discretion of the Administrative Counsel, conferences may be conducted telephonically.

**(B) Purposes and Conduct of Prehearing Conference.**

(1) The primary purposes of the prehearing mediation conference are to explore settlement possibilities through mediation and to address anticipated procedural matters. Additionally, any other matters that the Administrative Counsel determines may aid in the disposition of the proceedings will be considered.

(2) The statements and comments made in settlement negotiations during the prehearing conference are confidential except to the extent disclosed by the prehearing conference order under Paragraph (C) and shall not be disclosed by the Administrative Counsel nor by parties or their counsel.

(3) The scheduling of a prehearing conference **does not** stay the time for filing the record, transcript of proceedings, or briefs. If a prehearing conference is scheduled, a party may telephone the court's Administrative Counsel and request that the court issue a sua sponte order extending the time in which to transmit the record or file the brief and assignments of error. Requests for extensions may also be made orally at the prehearing conference and after the conference by telephone if agreed to by all parties. When such requests are made directly to this court's Administrative Counsel, it is not necessary to also file a motion in support of the request.

**(C) Prehearing Conference Order.** At the conclusion of the prehearing conference, this court's Administrative Judge, upon recommendation of the Administrative Counsel, may enter an order setting forth the actions taken and the agreements reached by the parties.

**(D) Noncompliance Sanctions.** If a party or attorney fails to comply with the provisions of this Rule or the provisions of the prehearing conference order or settlement agreement, this court may assess reasonable expenses caused by the failure, including attorney fees. This court may also assess all or a portion of the appellate costs or dismiss the appeal.

28. Has your program been evaluated? If so, could you share the results of the evaluation? No, however, the judges are provided with a monthly report.

Mediation Program Name: Prehearing Conference/Mediation

Court: Eleventh District Court of Appeals

Court Case Jurisdiction: As intermediate level appellate courts, our primary function is to hear appeals from the common pleas, municipal, and county courts within our district. In addition to appellate jurisdiction, the court has original jurisdiction to hear applications for writs of habeas corpus, mandamus, procedendo, prohibition, and quo warranto.

Court Geographic Jurisdiction: Ashtabula, Geauga, Lake, Portage and Trumbull

Name of Mediation Program Director/Administrator: Shibani Sheth-Massacci

Address: 111 High Street, NE

Telephone: 330-675-6681

Email: [ssmassacci@11thappealohio.us](mailto:ssmassacci@11thappealohio.us)

Website: [www.11thcourt.co.trumbull.oh.us](http://www.11thcourt.co.trumbull.oh.us)

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 2/3/2012

Shibani Sheth-Massacci  
Name

*Shibani Sheth-Massacci*  
Signature

Court Administrator/Magistrate/Admin Counsel  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

Survey Response:  
Ohio  
12<sup>th</sup> Appellate  
District

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established?  
January 2000
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?  
Local Rule
3. Are mediations ordered by the court or is mediation an optional service provided upon request?  
Both are used, depending on the particular case
4. When did the program begin conducting mediations?  
Informally in Nov. 1999, more frequently starting Jan. 2000
5. How many civil appeals are administered by your court annually?  
Varies from approx. 277 - 400
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.  
Mediator selects most of cases, usually involving a money judgment
7. How many cases were mediated in the most recent year?  
Approx. 50
8. How many cases settled in mediation in the most recent year?  
Full settlements 27      Partial settlements 1
9. How does your program define a "partial settlement?"  
Resolves some but not all issues on appeal
10. Does your program offer mediation in cases with self-represented parties?  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?  
Yes / approx. 10% / not really
11. Who serves as mediators in your program? How many of such mediators are currently active in your program?  
Court employs one attorney as full-time employee to do mostly mediation
12. What are the required qualifications for appellate mediators in your program?  
Attorney. Training as required by the State of Ohio
13. How are mediators selected or designated for a particular case?  
Same mediator for all cases

14. Are your cases mediated by one mediator or are they co-mediated?

One mediator

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

Any approach can be used, depending on particular case. Usually start out in facilitative mode.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

Mediator reports to Judges regularly. Judges and administrator can recommend cases for mediation.

17. What is the annual cost of the program?

Mediator's salary / part-time secretary / materials estimate = \$90,000

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?

One full-time secretary is used part-time for typing mediation notices, etc. She does not mediate.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.

Yes, but it is relatively rarely allowed. Issues must not be amenable for mediation

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe.

Yes, but so far financial sanctions have never been imposed. Court has stricken pleadings for mentioning mediation communications.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort) We don't keep track of the percentages, but this list is approx. most common to least common

1) domestic relations \_\_\_\_\_ %

2) contract \_\_\_\_\_ %

3) tort \_\_\_\_\_ %

4) small claims \_\_\_\_\_ %

5) worker's comp. \_\_\_\_\_ %

6) original actions \_\_\_\_\_ %

- 7) \_\_\_\_\_ %
22. If you are able to provide settlement statistics per case type, please do so.  
We don't track settlement rates by case type
23. What types of civil cases, if any, are ineligible for mediation in your program?  
Nothing is completely off limits, but custody cases & inmate cases are rare
24. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.  
Not really – just minor tweaks
25. What do you rate as the most significant successes of your appellate mediation program to date?  
High settlement rate / high attorney & client satisfaction
26. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?  
Pro se appeals. Highly intractable parties/attorneys. Multiple party appeals.
27. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?  
As compared to pre-mediation years, Judges now typically dispose of more civil appeals overall, but write fewer decisions in doing so thanks to the now higher overall dismissal rate. Our appellate district was rapidly growing, but mediation helped delay for several years the need to add an extra judge and associated staff.
28. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.  
Included in this mailing
29. Has your program been evaluated? If so, could you share the results of the evaluation?  
N/A

Mediation Program Name: Mediation

Court: 12<sup>th</sup> District Court of Appeals

Court Case Jurisdiction: Appeals and original actions

Court Geographic Jurisdiction: southwest Ohio

Name of Mediation Program Director/Administrator: Gregory M. Clark - Mediator

Address: 1001 Reinartz Blvd. / Middletown, Ohio 45042

Telephone: 513-425-6609

Email: [greg.clark@twelfth.courts.state.oh.us](mailto:greg.clark@twelfth.courts.state.oh.us)

Website: [www.twelfth.courts.state.oh.us](http://www.twelfth.courts.state.oh.us)

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1/30/12

Gregory M. Clark  
Name

Gregory M. Clark  
Signature

Mediator/Conference Attorney  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

*eff. Jan. 1, 2010*

# COURT OF APPEALS OF OHIO



## TWELFTH APPELLATE DISTRICT

### LOCAL RULES

Brown, Butler, Clermont, Clinton,  
Fayette, Madison, Preble and Warren Counties

(O) **Filing by Facsimile.** The filing of pleadings that do not require a security deposit may be accomplished by telephonic facsimile transmission or other electronic transmission in compliance with the local rules of the clerk of the court of appeals for the county where the original action is pending. See Loc.R. 13(E).

## **RULE 21. PREHEARING MEDIATION CONFERENCE PROCEDURE.**

Pursuant to App.R. 20, this court hereby adopts the following prehearing mediation conference procedure, applicable only to civil and administrative appeals and original actions filed in this court:

(A) **Requesting and Scheduling a Prehearing Mediation Conference.** The court shall review the required docket statement filed pursuant to Loc.R. 4 or complaint filed pursuant to Loc.R. 20 to determine whether a prehearing mediation conference would be of assistance to the parties or the court. If a prehearing mediation conference is deemed advisable, the court shall notify the parties of the date, time and location of the prehearing mediation conference.

In addition, any party may request a prehearing mediation conference by contacting the conference attorney or by written motion to the court. Such requests may be made confidentially if the requesting party desires. Such requests shall be submitted as soon as possible after initiation of the appeal. Requests for a prehearing mediation conference may or may not be granted by the court.

(B) **Purposes and Procedure of Prehearing Mediation Conference.** The prehearing mediation conference shall be held with the court's conference attorney. Conferences conducted in person shall be subject to the attendance requirements of Section (C) of this rule. Follow-up conferences may be conducted, attended either in person or by telephone, as directed by the court. The primary purposes of the prehearing mediation conference are: (1) to explore settlement possibilities through mediation, (2) to simplify the issues in the appeal or original action if settlement is not possible, and (3) to address any anticipated procedural problems. Additionally, any other matters that the conference attorney determines may aid in handling the disposition of the proceedings will be considered.

It is desirable to hold the prehearing mediation conference before the parties incur additional expense. Therefore, the court will make every effort to schedule the prehearing mediation conference before the transcript of proceedings is to be filed or before the appellant's brief is due if no transcript of proceedings is to be filed. Because this is not always possible, the parties are cautioned that the

scheduling of a prehearing mediation conference **does not** automatically stay the time in which the transcript of proceedings or briefs must be filed.

**(C) Attendance.** Unless otherwise instructed by the court, the following persons shall attend the prehearing mediation conference in person: counsel, the parties necessary for full settlement authority including insurance adjustors, and litigants not represented by counsel. "Counsel," for purposes of this rule, means the attorney with primary responsibility for the case and upon whose advice the party relies. Persons excused in advance by the court from attending in person shall be available by telephone during the scheduled conference.

**(D) Extension of Time to File Record and Briefs.** If a prehearing mediation conference is scheduled after the date the record is to be transmitted or after a brief is to be filed, the affected party may telephone the court's conference attorney and request that the court issue a sua sponte order extending the time in which to transmit the record or file the brief. Requests for extensions may also be made orally at the prehearing mediation conference. Thereafter, such requests may be made by telephone; however, the court may require the request be made by written motion pursuant to App.R. 10 or 14 and Loc.R. 10 or 14. In all instances, the request shall be made prior to the time sought to be extended has expired and shall indicate whether any other party opposes the request for extension. Requests for extension made pursuant to this section may be granted if the court deems it would facilitate settlement.

**(E) Privilege and Confidentiality.** The privilege and confidentiality provisions of the Uniform Mediation Act, R.C. Chapter 2710, apply to all prehearing mediation conferences. Mediation communications shall be privileged and therefore shall not be disclosed by the conference attorney or by the parties and shall not be used by the parties when presenting or arguing the case. Mediation communications shall also be confidential unless all parties and the conference attorney consent to disclosure.

**(F) Prehearing Mediation Conference Order.** At the conclusion of the prehearing mediation conference, a judge or magistrate, upon recommendation of the conference attorney, may enter an order setting forth the actions taken based on the agreements reached by the parties. Such order shall govern the subsequent course of proceedings, unless modified by the Court.

**(G) Noncompliance Sanctions.** Failure to comply with the provisions of this rule or any order of the court relating to a prehearing mediation conference may result in dismissal of the proceeding or assessment of such costs as may be

attributable to noncompliance including, but not limited to, attorney fees and court costs.

## **RULE 22. APPEAL OF ORDER DENYING BAIL.**

Appeals taken from orders denying bail pursuant to R.C. 2937.222(D)(1) shall be expedited as follows:

- (A) (1) The appellant shall complete the record on appeal and file a brief as quickly as possible after filing a timely notice of appeal. (See [D] below.) No scheduling order will be issued, and the filing of the appellant's brief shall serve as notice that the record on appeal is complete. The brief may be filed in the form of a memorandum to the court, shall not exceed fifteen (15) pages and shall contain at least one assignment of error. A copy of the trial court's order denying bail shall be attached.  
  
(2) The appellee's brief shall not exceed fifteen (15) pages and shall be filed within ten (10) days of the date that the appellant's brief is filed. The appellee may supplement the record, if necessary, on or before the date the appellee's brief is filed. If the appellee supplements the record, the appellant may file a reply brief, no more than five (5) pages in length, within five (5) days of the date the appellee's brief is filed.
- (B) Oral argument will not be held unless requested by either party on or prior to the date the appellee's brief or appellant's reply brief is due for filing or ordered by the court. Oral argument will be expedited by the court.
- (C) The decision issued by the court may be in the form of an accelerated calendar entry as contemplated by App.R. 11.1 and Loc.R. 6.
- (D) If the appellant's brief is not filed within twenty (20) days after the date the notice of appeal is filed, the appeal may be dismissed by the court for failure of prosecution.

**RULES 23-25. RESERVED.**

COURT OF APPEALS OF OHIO  
TWELFTH DISTRICT COURT OF APPEALS  
PREHEARING CONFERENCE PROCEDURES

Pursuant to App.R. <sup>21</sup>20, the Court conducts a prehearing mediation conference to offer participants a confidential, risk-free opportunity to candidly evaluate their case with an informed neutral and explore possibilities for voluntary resolution of the litigation. For your assistance, the following are answers to some commonly asked questions:

- How are cases selected for prehearing mediation conferences? All civil and administrative appeals and all original actions are eligible for mediation. Cases are selected specifically or at random by the Court. Counsel may also confidentially request a prehearing conference, which the Court may grant in its discretion.
- Why are conferences scheduled shortly after the notice of appeal is filed? Prehearing conferences are held quickly so that resolution can be explored prior to the parties incurring further cost and expense. Experience has shown that the filing of briefs dramatically reduces the likelihood that the parties will be able to reach a mutual resolution.
- What if the record or brief is due shortly? The mere setting of a prehearing conference date does not suspend other appeal deadlines. A request for continuance can be made by written motion or merely by contacting the conference attorney at 513/425-6609 or 1-800-824-1883. The Court may grant the request if it is deemed to be conducive to the mediation process.
- What if I have an unavoidable conflict with the scheduled date and time? If you need to reschedule because of a previously scheduled court appearance, planned vacation or unforeseen emergency, please immediately call the conference attorney at 513/425-6609 or 1-800-824-1883. Alternative dates and times will be provided to you. It is the duty of the rescheduling attorney to contact all other counsel on the case to arrive at a mutually agreeable date and time and then promptly notify the conference attorney of the rescheduled date and time. Rescheduled cases are typically held no later than fourteen (14) days after the originally scheduled conference.
- Is participation in prehearing conferences optional? No. Participation is mandatory.
- Must each party's lead attorney attend conference? Yes. It is critical that each party be represented at the prehearing conference by the attorney who is not only conversant with the case, but is also the attorney on whose advice the client chiefly relies.
- Are the clients required to attend? Clients are usually required to attend the initial conference. At any prehearing conference in which client attendance is not required, clients or their designated representatives with full settlement authority shall be available by telephone for the duration of the conference to facilitate the settlement discussions. The conference attorney encourages active client participation when helpful or conducive to the settlement discussions.
- How long do the conferences last? On average, prehearing conferences typically last approximately ~~two~~<sub>3</sub> hours. It is not unusual, however, for conferences to go beyond that. The conference attorney will afford counsel and the parties as much time as necessary to accomplish the purposes of the prehearing conferences.
- What preparation is required of counsel? Counsel are to consult with their clients prior to the conference and obtain the requisite settlement authority. Care should be taken to include the necessary "decision makers." Counsel are to be prepared to fully explore in good faith all options, avenues, and possibilities which might lead to a mutually acceptable resolution of the case. Counsel should also review their factual and legal interests prior to conference. Discussion of settlement is not necessarily limited to the appeal itself. If settlement of the appeal will not dispose of the entire case, or, if related litigation is pending or anticipated in other forums, counsel are encouraged to explore the possibility of a global settlement.

- What takes place at the prehearing conference? While prehearing conference procedures are official proceedings of the Court, they are conducted in a relatively informal manner. Discussions are typically conversational rather than argumentative. Initially, procedural issues and questions are addressed. The primary substantive issues and anticipated assignments of error are then discussed. Thereafter, resolution is actively explored through the mediation process. The mediation focuses on possible outcomes on appeal; the risks and costs of further litigation; the interests and motivations of the parties; and the potential benefits gained by resolution of the appeal or settlement of the entire case. The conference attorney typically meets jointly with counsel and the parties and then meets separately with each side in his role as mediator. Settlement options and proposals are thoroughly discussed. Resolution may or may not be reached during the initial conference. Following an initial conference, the conference attorney typically initiates further discussions by telephone or will schedule follow-up conferences if helpful. By the conclusion of the prehearing conference process, the parties have either reached a resolution or have identified the remaining obstacles and areas of impasse.
- What is the role of the conference attorney in the prehearing conference process? The conference attorney serves as a neutral and impartial mediator and may perform a variety of roles as may be conducive to the settlement process. He may act as a facilitator, moderator or intermediary. He may act as a sounding board or as a reality check. Typically he will encourage neutral analysis rather than arguments and accusations. He will assist as needed in the generation of possible options for resolution and encourage collaborative problem-solving in the search for mutually agreeable terms. Throughout the mediation process, he will maintain the confidences of the parties and make no recommendation to the Court on the merits of the case.
- Are prehearing conferences confidential? Yes. By rule and agreement of counsel, prehearing conference proceedings are confidential and off the record. The conversations are also protected by the mediation privilege statute, R.C. ~~2317.023~~ <sup>2710.03</sup>. Nothing said by the participants, including the conference attorney, may be disclosed to anyone on the Twelfth District Court of Appeals or with any other court that might ever deal with the case on the merits.
- Do judges of the Court of Appeals know what transpires at prehearing conferences? No. Any settlement discussions or negotiations which have taken place at a prehearing conference remain confidential and are not revealed to the Court. The prehearing conference process provides appellate counsel and the parties with a confidential and credible, no risk and low cost environment in which they can actively explore options and avenues of resolution which are consistent with their best interests. If no agreements are reached, the case is absolutely unaffected and those in the decisional process that follows know nothing about the mediation discussions. The conference attorney's notes and documents created for settlement purposes will not become part of the Court's file.
- How can I best use the prehearing conference to benefit my client? Recognize that the prehearing conference procedures provide a short window of opportunity to achieve a favorable outcome consistent with your client's overall interests and risks. While maintaining your role as an advocate, understand that the appellate mediation conference is essentially cooperative rather than adversarial. Take advantage of the opportunity to talk constructively and confidentially with counsel for the other parties. Listen closely to what the other participants have to say. Try to be as candid as possible without posturing. Be persuasive yet open to persuasion. Keep in mind that rigidly adhering to a predetermined "bottom line" is usually unproductive because your views about the case, based on new insights and information, often change during the course of the mediation process. This may lead to additional and unanticipated avenues and options for resolution and mutual gain.
- How can a prehearing conference be requested? Counsel may confidentially request a prehearing conference by calling or writing Conference Attorney Gregory M. Clark or Administrator Bennett A. Manning at Twelfth District Court of Appeals, 1001 Reinartz Blvd., P.O. Box 1009, Middletown, Ohio 45042, 513/ 425-6609 or 1-800-824-1883. Alternatively, counsel may request a conference by formal motion filed with the Court. To avoid needless expense, requests should be submitted as early as possible in the appellate process. If granted, counsel will be notified that a conference has been scheduled.

Survey Response

**Oklahoma**

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established? **1993**
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)? **Supreme Court Rule**
3. Are mediations ordered by the court or is mediation an optional service provided upon request? **Chief Justice Order**
4. When did the program begin conducting mediations? **March, 1993**
5. How many civil appeals are administered by your court annually? **1288 in 2010**
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process. **Both the "Petition in Error" and the "Response" must indicate a willingness to participate in an appellate settlement conference. Cases involving workers' compensation issues are excluded from the program.**
7. How many cases were mediated in the most recent year? **35 in FY 2011 (July 1, 2010 – June 30, 2011)**
8. How many cases settled in mediation in the most recent year?  
Full settlements   22   Partial settlements
9. How does your program define a "partial settlement?" **We do not count "partial settlements."**
10. Does your program offer mediation in cases with self-represented parties? **No**  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?
11. Who serves as mediators in your program? **Active, Retired Judges who are appointed by the Chief Justice**  
How many of such mediators are currently active in your program? **8**
12. What are the required qualifications for appellate mediators in your program? **Appellate Settlement Conference Judges must be active, retired judges who are selected and appointed by the Chief Justice. All must complete mediation training prior to providing service.**
13. How are mediators selected or designated for a particular case? **Appellate Settlement Conference Judges are located throughout the state. Cases are assigned based on availability of the judge as well as proximity to the litigants and their counsel.**

14. Are your cases mediated by one mediator or are they co-mediated? **One Judge**
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services. **Facilitative combined with self evaluation by the litigants and their counsel with some neutral case evaluation (in caucus) and discussion of the outcomes of similar cases.**
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program. **Coordination and scheduling of appellate settlement conferences is done by the assistant to the director of the Oklahoma ADR System. Judges serve as faculty and role models when new judges are trained to join the cadre. Management is pursuant to the rules and procedures approved by the Oklahoma Supreme Court.**
17. What is the annual cost of the program? **We budget \$35,000 annually to pay judicial per diem (set by statute at \$300) and mileage reimbursements for the judge. We have never expended the full \$35,000 in a year. I would guesstimate that we spend between \$25,000 and \$30,000 each year.**
18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program? **Two staff members – the ADR System director and the director’s administrative assistant. Neither of us conducts the conferences.**
19. If parties are ordered to mediation in your program, are they permitted to “opt-out” of mediation? Please describe the grounds permitted to opt-out. **Yes, parties may withdraw after they receive the order from the Chief Justice. All that is required is that the parties file a motion to withdraw. Participation in the program is voluntary.**
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? **No** If so, have such sanctions been imposed? Please describe. **The Court has been approached about sanctions in the past and the decision has been consistent that no sanctions will be imposed, even for “no-shows.”**
21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)
- 1) Contracts- \_\_\_\_\_ 34%
  - 2) Domestic Relations \_\_\_\_\_ 37%
  - 3) Employment - Labor \_\_\_\_\_ 9%
  - 4) Real Property \_\_\_\_\_ 6%
  - 5) Landlord – Tenant \_\_\_\_\_ 3%

6) Personal Injury \_\_\_\_\_ 3%

7) Other \_\_\_\_\_ 8%

21. If you are able to provide settlement statistics per case type, please do so. **Not available**
22. What types of civil cases, if any, are ineligible for mediation in your program?  
**Appellate Settlement Conferences are held only for cases from the "District Court – Final Order or Judgment"**
23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? **No** If so, please describe.
24. What do you rate as the most significant successes of your appellate mediation program to date? **Reducing the time and expense of the litigants who are parties to appellate cases.**
25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country? **We have not identified any major challenges or issues. Our greatest annoyance is the occasional "no show."**
26. How has the program affected the workload of your court? **2% to 4% of the cases are settled.** Has your court been able to dispose of more cases annually? **Not that I am aware of.** What effect, if any, has your program had on the need for additional judicial resources? **I am not aware of any effect on judicial resources.**
27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.
28. Has your program been evaluated? **No** If so, could you share the results of the evaluation?

Mediation Program Name: **Appellate Settlement Conference Program**

**Note: We differentiate between the mediation process and the settlement conference process with the primary difference being the evaluation component.**

Court: **Oklahoma Supreme Court**

Court Case Jurisdiction: **All Civil Appellate Cases**

Court Geographic Jurisdiction: **The State of Oklahoma**

Name of Mediation Program Director/Administrator: **Sue D. Tate**

Address: **Administrative Office of the Courts**  
**2100 N. Lincoln Boulevard, Suite 3**  
**Oklahoma City, OK 73105**

Telephone: **(405) 556-9873**

Email: sue.tate@oscn.net

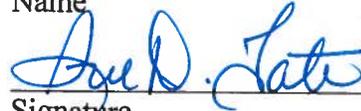
Website: www.oscn.net

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: January 5, 2012

Sue D. Tate

Name



Signature

Director of Judicial Education/ADR/CIP  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, Mala.Ortiz@mdcourts.gov, phone 410-260-3715, fax 410-260-1547.



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## Title 12. Civil Procedure

## Oklahoma Statutes Citationized

## Title 12. Civil Procedure

## Appendix 1 - Oklahoma Supreme Court Rules

## Article Part VIII. Rules For Appellate Settlement Conference Program

## Section RULE 1.250 - ORDER FOR APPELLATE SETTLEMENT CONFERENCE

Cite as: O.S. §, \_\_\_

At the discretion of the Court, a case in which all the litigants have agreed to an appellate settlement conference may be invited to settlement conference after the filing of the response(s) to an appeal and to cross and counter appeals, if any. The purpose of the conference shall be to enable the parties to discuss their case, simplify the issues, negotiate settlement, and consider any matters that may aid in disposition of the case.

The order inviting the parties and counsel to appear for settlement conference shall be mailed to counsel of record by the Clerk of the Supreme Court. The settlement conference process shall be conducted in accordance with Rules 1.251, 1.252, and 1.253. Nothing in the settlement conference process shall toll any time periods or deadlines in the appeal process unless specifically so ordered by the Court.

**Historical Data**

Adopted by order of the Supreme Court, eff. January 1, 1997.

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## Title 12. Civil Procedure

### Oklahoma Statutes Citationized

#### Title 12. Civil Procedure

#### Appendix 1 - Oklahoma Supreme Court Rules

#### Article Part VIII. Rules For Appellate Settlement Conference Program

#### Section RULE 1.251 - Title 12. Civil Procedure

Cite as: O.S. §. \_\_\_

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#### (a) Administration.

The settlement conference program shall be directed by a program administrator designated by the Court. All documents in the settlement conference process shall be in the form prescribed by the Court.

#### (b) Screening and Selection.

Appeals shall be screened and selected from those petitions in error indicating that all parties are willing to participate in an attempted settlement of the appeal by predecisional conference if offered the opportunity. Screening and selection will be done by the program administrator promptly after the filing of the response(s) to an appeal and/or to cross and/or counter appeal(s), if any, whichever is later. After selection, the Court shall enter an order inviting the parties to participate in a settlement conference. A settlement conference may be requested at any time by joint application of all parties.

#### (c) Settlement Conference.

The settlement conference shall be conducted by a settlement conference judge unless the parties elect private dispute resolution as provided by Rule 1.251(f) below.

#### (d) Scheduling.

The settlement conference shall be scheduled by the program administrator at the earliest date possible at a location convenient for the parties. Upon application to the conference judge, and for good cause shown, the conference judge may change the date, time and/or location of the settlement conference.

#### (e) Settlement Conference Judge.

1. **Qualifications.** The Supreme Court shall choose a pool of Conference Judges. A conference judge may be a former appellate or district court judge on retired active status, an active judge in a judicial district other than the district where the appeal subject to settlement conference originated, a Supreme Court Referee or Staff Lawyer. The Court may determine other qualifications, including mediation and/or settlement training.

2. **Selection.** The conference judge for each settlement conference shall be selected by the program administrator from the list of conference judges chosen and approved by the Supreme Court. The program administrator may serve as the conference judge.

3. Role. The role of the conference judge is to facilitate discussions between the parties, help them simplify issues, and assist them in reaching a voluntary settlement. The conference judge has no authority to compel settlement.

4. Disclosure. A conference judge shall disclose any circumstance that may appear to affect impartiality. Issues of conflicts of interest or other grounds for disqualification shall be addressed informally to the conference judge. If the issue cannot be resolved, any party may move the Court to disqualify the conference judge.

5. Control. The conference judge shall conduct the settlement conference in the manner he or she deems appropriate.

(f) Private Dispute Resolution.

Upon joint motion filed by all parties within fifteen (15) days of the date of the settlement conference order, the Court may allow the parties to participate in mediation, arbitration, or another alternative dispute resolution process. In the motion, the parties shall state facts to establish that specific arrangements have been made for private dispute resolution of the appeal. The private settlement procedure shall be completed within forty-five (45) days of the order granting the joint motion. A final report shall be submitted by the parties to the Court within five (5) days after the settlement conference. Rule 1.251(h), Rule 1.251(i), Rule 1.251(j) and Rule 1.252 of these procedures and guidelines apply to private dispute resolution procedures.

(g) Settlement Conference Statements.

No later than five (5) days before the settlement conference, each party shall provide the conference judge and each other party with a settlement conference statement. The statement shall be in the Court's prescribed form (Rule 1.301, Form No. 20) and include any information specified in the Court's order notifying the parties of the settlement conference.

(h) Participants.

1. Parties. The settlement conference shall be attended by all parties and their counsel unless excused by the conference judge. Each party shall be represented at the conference by an individual with full settlement authority.

2. Interested Non-Parties. Any interested non-party, such as an insurance company or other person or entity that is contractually required to defend or to pay damages, shall be represented at the settlement conference by an individual with full settlement authority.

(i) Results.

Within five (5) days of the conclusion of the settlement conference, the conference judge shall report in writing to the program administrator the results of the conference. To the extent the parties settle the case or otherwise effect full disposition of all issues, they shall promptly file a dismissal or joint dismissal with the Clerk and provide a copy to the program administrator.

(j) Confidentiality.

Statements during the settlement conference process are confidential, are not binding on the parties except as agreed by written stipulation, and shall not be treated as admissions against interest or as limitations on a party's claims or defenses.

**Historical Data**

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Adopted by order of the Supreme Court, eff. January 1, 1997.

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Title 12. Civil Procedure

Oklahoma Statutes Citationized

Title 12. Civil Procedure

Appendix 1 - Oklahoma Supreme Court Rules

Article Part VIII. Rules For Appellate Settlement Conference Program

Section RULE 1.252 - Title 12. Civil Procedure

Cite as: O.S. §, \_\_ \_\_

(a) Role/Functions of Supreme Court and Chief Justice.

1. The Supreme Court shall set all guidelines for the Appellate Settlement Conference.
2. The Chief Justice shall oversee the Appellate Settlement Conference Program.
3. The Program Administrator may administer the program under the guidelines established by the Supreme Court and under the supervision of the Chief Justice.
4. The Supreme Court shall rule on motions presented after consideration of the Program Administrator's recommendations.

(b) Role/Functions of Program Administrator.

The Program Administrator:

1. Is a judge, Supreme Court Referee or Staff Lawyer, and has the mediation and/or settlement training required by the Court.
2. Drafts, evaluates and periodically revises settlement conference program forms for submission to the Supreme Court for its approval.
3. Selects cases to recommend to the Chief Justice for participation in settlement conference process.
4. Selects settlement conference judges from a list which has been approved by the Supreme Court and determines dates, times and locations of settlement conferences.
5. Reviews all motions and presents written recommendations to the Chief Justice for final decision.
6. Monitors parties' private dispute resolution efforts and results; and formulates scheduling orders for entry by Chief Justice if such procedures are not timely accomplished.
7. Arranges training for settlement conference judges.
8. Conducts formal and informal exchanges with Oklahoma Bar under the supervision of the Chief Justice.

9. After prior Supreme Court approval, arranges for publications and seminars.
10. Compiles and analyzes statistics concerning the program with the assistance of the Administrative Director of the Court and the Court Clerk.
11. Coordinates continuing evaluation of program by Supreme Court, Program Administrator, settlement conference judges, Administrative Director of the Court, Court Clerk, Oklahoma Bar Association, Oklahoma lawyers practicing before the Court, and the general public.
12. Provides the Supreme Court with a monthly report detailing the number of cases currently pending in the settlement process, the number of cases resolved by the settlement process (by category), and the costs associated with administering the program.

(c) Role/Functions of Court Clerk.

The Court Clerk works with the Program Administrator in coordinating records and notices necessary to facilitate operation of the settlement conference program.

(d) Role/Functions of Settlement Conference Judge.

The Settlement Conference Judge:

1. Is a judge, a Supreme Court Referee or Staff Lawyer, and has the mediation and/or settlement training required by the Court.
2. Acts as an advocate for settlement and has the discretion to direct the conference in the manner he or she deems appropriate, including such actions as joint and/or private sessions with the parties and/or their counsel, ex parte communications with counsel before and/or after the settlement conference, and multi-party conference calls.
3. Works with the Program Administrator to schedule the conference, exercises discretion to reschedule the date, time or place of the conference, and notifies the Program Administrator of such change.
4. Discloses to the Program Administrator and the parties any circumstance that may appear to affect the conference judge's impartiality, and recuses as appropriate.
5. Protects the integrity and confidentiality of the settlement process.
6. Reviews settlement conference statements in advance to verify participation by all necessary parties and counsel, to assure that those with authority will participate, to assess issues, and to anticipate need for various documents, etc.; and consults with counsel as indicated to assure preparedness for conference.
7. Begins and guides the discussion at the settlement conference, listens to the factual and legal positions of the parties, identifies issues and interests, generates movement toward settlement, and terminates or continues the conference as appropriate.
8. Reports the results of the conference to the Court Clerk within five (5) days of the final conference.
9. Gives the Court written notice through the Program Administrator if any party fails to appear after receiving written notice of the conference and without good cause.

(e) Roles/Functions of Counsel and Parties.

Counsel and the parties participating in the settlement conference are expected to:

1. Comply with the Procedures and Guidelines governing settlement conference, private dispute resolution procedures, depending upon decision(s) made by the parties and their counsel.
2. Promptly notify the conference judge of any facts outside the record that may appear to affect the conference judge's impartiality.
3. Before the settlement conference, prepare to: a) discuss the facts and issues involved in the appeal, b) provide copies of any pertinent statutes, orders, transcripts and other relevant materials, and c) suggest possible terms for settlement.
4. Appear at the settlement conference with someone with full authority to settle or compromise the appeal.
5. Arrange for the attendance at the settlement conference of any interested non-party, such as an insurance company or other person or entity that is contractually required to defend or pay damages, which shall be represented by an individual with full settlement authority.
6. Provide the conference judge and each other party with a settlement conference statement in accordance with the Procedures and Guidelines.
7. Maintain the confidentiality and integrity of the settlement process.
8. Promptly file dismissal or joint dismissal pleadings with the Clerk if the case settles.

**Historical Data**

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Adopted by order of the Supreme Court, eff. January 1, 1997.

**Citationizer® Summary of Documents Citing This Document**

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Title 12. Civil Procedure

**Oklahoma Statutes Citationized**

**Title 12. Civil Procedure**

**Appendix 1 - Oklahoma Supreme Court Rules**

**Article Part VIII. Rules For Appellate Settlement Conference Program**

**Section RULE 1.253 - Title 12. Civil Procedure**

Cite as: O.S. §. \_\_ \_\_

Court approved forms for use in the appellate Settlement Conference Program are provided in Part IX of these Rules, Appendix of Forms.

**Historical Data**

Adopted by order of the Supreme Court, eff. January 1, 1997.

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

\_\_\_\_\_ )  
 \_\_\_\_\_, )  
 )  
 Plaintiff/Appell \_\_\_\_\_, )  
 vs. \_\_\_\_\_ ) No. \_\_\_\_\_  
 \_\_\_\_\_ )  
 \_\_\_\_\_, )  
 )  
 Defendant/Appell \_\_\_\_\_.

ORDER FOR SETTLEMENT CONFERENCE

Parties, interested non-parties and counsel in this appeal are invited to participate in a settlement conference pursuant to Part VIII, Oklahoma Supreme Court Rules. All parties and their counsel shall appear for settlement conference on \_\_\_\_\_ (date), at (time), at \_\_\_\_\_ (location). If a party chooses not to participate in the procedure, a motion must be filed within \_\_\_ days of the order requesting that the order for settlement conference be withdrawn.

The settlement conference judge will be:

Name and title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Counsel shall timely advise any interested non-party of this order.

The settlement conference shall be conducted in accordance the Procedures and Guidelines for Appellate Settlement Conference set forth in Rule 1.251, Oklahoma Civil Appellate Rules.

Written settlement conference statements shall be provided in advance by each party as required by the Procedures and Guidelines, Rule 1.251(g).

The parties and interested non-parties shall each be represented at the settlement conference by someone with full settlement authority.

Counsel and parties shall be prepared to: (1) discuss the facts and issues involved in this appeal, (2) provide copies of any pertinent statutes, orders, transcripts and other relevant materials, and (3) suggest possible terms for settlement.

Information disclosed to the conference judge and counsel and other parties during the process shall be regarded as confidential, shall not be placed in the court file in this case, and shall not be disclosed to any person who is not a participant in the conference.

DATED this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

\_\_\_\_\_)  
 \_\_\_\_\_, )  
 )  
 Plaintiff/Appell \_\_\_\_\_, )  
 vs. )  
 \_\_\_\_\_ )  
 \_\_\_\_\_, )  
 )  
 Defendant/Appell \_\_\_\_\_.

No. \_\_\_\_\_

SETTLEMENT CONFERENCE STATEMENT

(This statement shall not exceed five pages. Include any information specified in the Order for Settlement Conference and not itemized on this form. Provide this statement to the settlement conference judge and each other party no later than five (5) days before the scheduled settlement conference.)

1. This statement is submitted by

\_\_\_\_\_

(Appellant or Appellee)

(Name)

2. Date of judgement or final order. (Appellant to enclose copy).
3. Lower court, county, case number and judge.
4. Date petition in error was filed.
5. Related cases pending or closed in this Court; and outcome of each case decided (including previous appeals in same case).
6. Brief statement of facts.
7. Approximate dollar amount in controversy; if other than or in addition to money damages, the type(s) of relief sought from the lower court.
8. Lower court disposition being appealed.
9. As to each issue on appeal or cross-appeal, state your basis for relief or affirmation; and identify the applicable standard of review.
10. If the appeal will turn on an interpretation or application of a particular case or statute, cite the case or statute number.

11. Describe any previous settlement efforts; and current prospects for settlement.  
12. Identify all persons who will attend the scheduled settlement conference on behalf of this party:

a. NAMED PARTY (INDIVIDUAL)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone (Home and Work): \_\_\_\_\_  
Fax: \_\_\_\_\_

b. NAMED PARTY (CORPORATION OR PARTNERSHIP)

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone and Fax: \_\_\_\_\_  
Representative - Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone (Home and Work): \_\_\_\_\_  
Fax: \_\_\_\_\_

c. ATTORNEY

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone and Fax: \_\_\_\_\_

d. INTERESTED NON-PARTY/INSURANCE COMPANY(IES)

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone and Fax: \_\_\_\_\_  
Representative - Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone (Home and Work): \_\_\_\_\_  
Fax: \_\_\_\_\_

e. OTHERS

Name: \_\_\_\_\_ Role at Settlement Conference: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone (Home and Work) and Fax: \_\_\_\_\_

13. Identify persons with full authority to settle on behalf of named party at the settlement conference.

Name: \_\_\_\_\_

Named-Party

Affiliation:

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone \_\_\_\_\_ (Home \_\_\_\_\_ and  
Work): \_\_\_\_\_

Fax: \_\_\_\_\_

DATE: \_\_\_\_\_

For Appell \_\_\_\_\_.

\_\_\_\_\_  
Name of Party

By: \_\_\_\_\_

Attorney Name

OBA No. \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Fax \_\_\_\_\_

(Certificate of Mailing)

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

\_\_\_\_\_)  
 \_\_\_\_\_, )  
 \_\_\_\_\_) )  
 Plaintiff/Appell \_\_\_\_\_, )  
 vs. \_\_\_\_\_) No. \_\_\_\_\_  
 \_\_\_\_\_) )  
 \_\_\_\_\_, )  
 \_\_\_\_\_) )  
 Defendant/Appell \_\_\_\_\_.

MOTION FOR WITHDRAWAL OF CAUSE FROM SETTLEMENT CONFERENCE

I (We), the [Plaintiff(s)/Appell \_\_\_\_\_(s), Defendant(s)/Appell \_\_\_\_\_(s)], move that the above styled and captioned cause be withdrawn from the settlement conference scheduled for \_\_\_\_\_, 201\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
 (Name)  
 OBA Number-(unless appearing pro se): \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Fax: \_\_\_\_\_

For Plaintiff(s)/Appell \_\_\_\_\_(s): \_\_\_\_\_  
 For Defendant(s)/Appell \_\_\_\_\_(s): \_\_\_\_\_

(Certificate of Mailing)

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

\_\_\_\_\_)  
 \_\_\_\_\_, )  
 \_\_\_\_\_) )  
 Plaintiff/Appell \_\_\_\_\_, )  
 vs. \_\_\_\_\_) No. \_\_\_\_\_  
 \_\_\_\_\_) )  
 \_\_\_\_\_, )  
 \_\_\_\_\_) )  
 Defendant/Appell \_\_\_\_\_.)

NOTICE OF CONTINUANCE AND/OR RELOCATION OF SETTLEMENT CONFERENCE

\_\_ At the request of counsel for Appellant/Appellee/all parties, the settlement conference scheduled for this case has been continued to \_\_\_\_\_ (a.m./p.m.) on \_\_\_\_\_, 199\_\_.

\_\_ At the request of counsel for Appellant/Appellee/all parties, the settlement conference scheduled for this case at \_\_\_\_\_ (a.m./p.m.) on \_\_\_\_\_, 199\_\_, has been \_\_\_\_\_ relocated to \_\_\_\_\_ (building) \_\_\_\_\_ (room) \_\_\_\_\_ (address).

DATED this \_\_ day of \_\_\_\_\_, 199\_\_.

SETTLEMENT CONFERENCE JUDGE

Settlement Conference Judge to send original to Court Clerk and Court Clerk to mail a copy to each party.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

\_\_\_\_\_) )  
 \_\_\_\_\_, )  
 \_\_\_\_\_ )  
 Plaintiff/Appell \_\_\_\_\_, )  
 vs. \_\_\_\_\_ ) No. \_\_\_\_\_  
 \_\_\_\_\_ )  
 \_\_\_\_\_, )  
 \_\_\_\_\_ )  
 Defendant/Appell \_\_\_\_\_. )

ORDER WITHDRAWING ORDER FOR SETTLEMENT CONFERENCE

ORDERED, that upon consideration of the Motion for Withdrawal of the Cause from Settlement Conference, the Order for Settlement Conference is hereby withdrawn.

Party: \_\_\_\_\_

Counsel: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

\_\_\_\_\_) )  
 \_\_\_\_\_, )  
 \_\_\_\_\_ )  
 Plaintiff/Appell \_\_\_\_\_, )  
 vs. \_\_\_\_\_ ) No. \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_, )  
 \_\_\_\_\_ )  
 Defendant/Appell \_\_\_\_\_ )

REPORT OF SETTLEMENT CONFERENCE

1. Settlement conference date: \_\_\_\_\_
2. Settlement conference location: \_\_\_\_\_
3. Settlement conference length: \_\_\_\_\_ hours \_\_\_\_\_ minutes.
4. The case was (circle one letter);
  - a. settled in full;
  - b. not settled;
  - c. settled in part (circle appropriate number):
    - (1) parties reached agreement on one or more issues or claims;
    - (2) case settled as to some parties, but not all parties.
5. Conference was held with (circle one letter):
  - a. all participants present in person;
  - b. by advance permission of conference judge, one or more participants present by telephone; all others present in person;
  - c. Other: \_\_\_\_\_
6. Total number of participants (excluding conference judge): \_\_\_\_\_
7. TYPE OF CASE: (Circle one classification that most nearly fits):
  - a. Contract
  - b. Domestic Relations
  - c. Employment/Labor
  - d. Environment
  - e. Insurance
  - f. Landlord/Tenant
  - g. Personal Injury (specify type)

- \_\_\_\_\_ Auto
- \_\_\_\_\_ Medical Malpractice
- \_\_\_\_\_ Premises
- \_\_\_\_\_ Products
- \_\_\_\_\_ Other (specify)

- h. Personal Property
- i. Real Property
- j. Securities
- k. UCC
- l. Other (specify)

8. DAMAGES SOUGHT: (circle letter of appropriate classification)

- a. Money damages not an issue
- b. Small claims (up to \$2,500)
- c. More than \$2,500, but not more than \$10,000
- d. More than \$10,000 and (circle appropriate number):
  - (1) not more than \$25,000
  - (2) not more than \$50,000
  - (3) not more than \$100,000
  - (4) not more than \$500,000
  - (5) not more than \$1 million
  - (6) more than \$1 million

9. If the case did NOT settle, the primary reason(s) probably were (circle applicable letter[s]):

- a. Issues/facts too complex
- b. Issue(s) of great public importance
- c. Question of law
- d. Matter of principle
- e. Emotional issues
- f. Other (specify):

10. Comments:

\_\_\_\_\_  
SETTLEMENT CONFERENCE JUDGE

\_\_\_\_\_  
DATE

(Send original to Court Clerk)

Survey Response

**Oregon**

STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established?

1995

2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?

Rule

3. Are mediations ordered by the court or is mediation an optional service provided upon request?

Mediation is ordered in Dom Rel, general civil and worker's compensation appeals. All other appeals are mediated on a voluntary basis. That said, we screen all cases and will not order those that have absolutely no chance of settlement. We do order cases where one side says "yes" to mediation and the other side says "no".

4. When did the program begin conducting mediations?

1995

5. How many civil appeals are administered by your court annually?

We review anywhere from 350-450 cases per year but not all appeals are ultimately formally mediated.

6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.

On voluntary opt-ins, all cases are mediated. On mandatory cases, a settlement conference form is filled out by appellants and cross-appellants and served on opposing counsel. We review these forms and have contact with Respondent's counsel. Sometimes the screening process takes several weeks of back and forth contact. Sometimes it includes conference calls other times, individual calls. We push for mediation and our biggest impact on the court's docket is to mediate cases that would have otherwise never settled without our intervention. That is why we do not rely on voluntary mediations. Those voluntary parties could easily pursue their own mediation. However, there are always certain times when certain legal issues, such as Constitutional issues and statutory interpretation, and practical considerations, e.g. where attorneys have no contact with their clients, parties are unable to assist or participate in a mediation, etc. make it impractical to order mediation. Finally, there are some cases that are still not ripe for settlement for dozens of reasons.

7. How many cases were mediated in the most recent year?

8. 144

9. How many cases settled in mediation in the most recent year?

10.

Full settlements \_\_ 115 \_\_\_\_ Partial settlements \_\_ 3 \_\_\_\_

11. How does your program define a “partial settlement?”

When at least one of the parties is dismissed out.

We find that in the cases that don’t settle, the legal issues are refined and streamlined, however, it is impossible to determine whether those issues would have been refined, abandoned, etc., without mediation, so we do not count that streamlining as a partial settlement. The exception would be when an entire cross-appeal is dismissed.

10. Does your program offer mediation in cases with self-represented parties?

If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?

On rare occasions, we will take pro se cases as opt-ins. Usually I or my staff attorney will handle those mediations.

11. Who serves as mediators in your program? How many of such mediators are currently active in your program? We utilize retired and sitting judges, and active lawyers. In addition, as administrator, my staff attorney and I will take difficult and unusual cases that we could not request our panel mediators to take. We have about 100 mediators but the parties are also allowed to hire their own private mediator if they so wish.

12. What are the required qualifications for appellate mediators in your program?

Our mediators are usually required to go through our training (for free) and in return provide a certain number of pro bono mediations. If we have a good fit, those mediators are moved to the paid panel. However, due to budget restrictions, we have not been able to conduct a training session in the last three years and are relying on the same panelists more often.

13. How are mediators selected or designated for a particular case? Subject matter expertise, geographical location, personality and style, etc.

14. Are your cases mediated by one mediator or are they co-mediated? Our cases are mediated by one mediator, however, two retired judges co mediate with their spouses.

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

We train in the most difficult method—joint session. It is our philosophy that those that can master this method, and the most difficult time (appellate), the mediators are well-equipped to handle any method. Most of our mediators have already trained down below in facilitative. That said, each mediator is required to tailor their method to the specific

appeal. Most of us start with joint session (there are obvious exceptions) use a spectrum of transformative and facilitative methods and may end with a more directive approach at the end (especially when parties request our opinion as to what we think the court will do in a particular case). Each case should be dealt with individually. We try to give our mediators all the tools necessary to achieve a good result and in the cases that do not settle (approximately 18%), we want the parties to feel that they were heard, that they understand where the other party(s) is coming from, and to feel that the process was helpful. We also find that in the cases that do not settle, the issues are often refined as indicated in question 11 above.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

As the administrator, I am not an elected judge but sit as a pro tem. The Chief Judge is my "boss" although he has delegated the responsibility and administration of the program to me. If I have a policy change, legislative language or rule change, I always consult with the Chief Judge. I have also consulted with the Chief when a particularly difficult employment termination occurred.

17. What is the annual cost of the program?

Approximately \$450,000

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?

As administrator, I work three days per week and I occasionally take difficult mediations that cannot otherwise be assigned out. We have a part-time staff attorney who works 2 ½ days per week and will also occasionally mediate cases and a full time clerical staff person.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out. The only time parties are allowed to "opt out" AFTER being ordered to mediation (remember, we screen these cases before ordering mediation) is in an emergency, usually medical, situation.

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe.

The court formally sanctioned one party for bad faith behavior—demanding mediation, confirming personal appearance of the CEO, cancelling at the last minute twice, and then sending a low level employee, who had no authority to settle, to the third scheduled mediation. The court ordered that party to pay attorneys fees and costs to the other side.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

1) general civil \_\_\_\_\_ 50 \_\_\_\_\_ %

2) domestic relations \_\_\_\_\_ 25 \_\_\_\_\_ %

3) workers compensation 10 \_\_\_\_\_ %

4) other 15%

5) \_\_\_\_\_ %

6) \_\_\_\_\_ %

7) \_\_\_\_\_ %

22. If you are able to provide settlement statistics per case type, please do so.

General civil 81%

Domestic relations 70% (while there are several support issues, we generally try to mediate all custody disputes which are very difficult mediations)

23. What types of civil cases, if any, are ineligible for mediation in your program?

Generally pro se (but see exceptions discussed above).

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

The mediation fees (paid directly to the mediator) have been modified twice. The remaining modifications have been mostly housekeeping matters. [Of course, for the first year, in order to study the feasibility of appellate mediation in Oregon, we had no opt-outs, no opt-ins and no screening, etc.]

24. What do you rate as the most significant successes of your appellate mediation program to date?

The fact that we save the court approximately 5-6 months of oral arguments each year; that we have provided some amazingly creative resolutions to complex situations; and that the Bar has embraced this program and for the most part, the parties have, too. The program is a very cost effective method for the resolution of appeals.

I think the impact of mediation on the personal lives of the parties is especially poignant when estranged family members have spoken to each other for the first time in years; when embittered business partners have mended fences; and so forth and so on. It is refreshing that in this business, happy endings can and do occur.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

Our major issue continues to be funding. We constantly face the "chopping block". The chief Judge has been the best supporter of the program and recognizes the assistance we provide to a very overworked court. We have survived (barely) up until now. However, once again, we are facing more budget cuts. The appellate courts have no other place to

cut. As a result, this constant fear that the program will be cut has been the biggest threat/issue we have faced. Both my staff attorney and I work part-time. Our clerical judicial assistant also occasionally assists the court. The program is as "lean" as it can be in order to perform as effectively as it does.

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

As stated above, we can show that our settlements save 5-6 months of oral arguments, thus preventing a 6 month court delay in decisions that would be cumulative each year. We also know that to resolve a case through settlement does not cost much more than the cost to administratively handle a voluntary dismissal prior to briefing. As a result, we save the court significant resources.

We know from our evaluations, that the vast majority (perhaps 90% or more) of the cases would never have settled without our intervention. That means that those cases would not only go to oral argument, but all would involve time to review briefs, confer, and research. A number (difficult to predict) would end up in full court hearings and result in written opinions. Some of our settlements in complex litigation would have taken the court several months to decide and write on. In one set of very complex, consolidated appeals, the attorneys have indicated that they believed the settlement saved the court up to 1,000 hours of work.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

I am in the process of making some housekeeping changes to the rules and there is a short legislative change that should go in to effect in February. Please contact me in a couple of months for the final versions.

28. Has your program been evaluated? If so, could you share the results of the evaluation? Two surveys by John Paul Jones Group in the 1990's and early 2000s.

Mediation Program Name: Appellate Settlement Conference Program

Court: Oregon Appellate Courts

Court Case Jurisdiction: Intermediate court of appeals, supreme court

Court Geographic Jurisdiction: State of Oregon

Name of Mediation Program Director/Administrator: Judy Henry



# Survey Response: Pennsylvania Commonwealth



13. How are mediators selected or designated for a particular case?  
Mostly by geography
14. Are your cases mediated by one mediator or are they co-mediated?  
One mediator
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.  
Best described as facilitative, thus cases are “resolved”, not “settled.”
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.  
Crucial to have a good team-oriented relationship
17. What is the annual cost of the program?  
Unknown (see 18)
18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?  
One administrator, one secretary, 2 mediating judges (in addition to regular duties), central filing and legal staff assistance (also in addition to regular duties).
19. If parties are ordered to mediation in your program, are they permitted to “opt-out” of mediation? Please describe the grounds permitted to opt-out.  
Yes, if in good faith would be fruitless and adjudication required.
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe.  
Yes. 3 hearings in 3 years, one resulted in monetary fine against attorney.
21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)
- |                                   |             |
|-----------------------------------|-------------|
| 1) <u>Workers Compensation</u>    | <u>35</u> % |
| 2) <u>Zoning</u>                  | <u>15</u> % |
| 3) <u>Dept. of Public Welfare</u> | <u>9</u> %  |
| 4) <u>Eminent Domain</u>          | <u>9</u> %  |
| 5) _____                          | ____ %      |
| 6) _____                          | ____ %      |

7) \_\_\_\_\_ %

22. If you are able to provide settlement statistics per case type, please do so.  
Historical resolution rate for all cases centers around 46%. (see also 16)
23. What types of civil cases, if any, are ineligible for mediation in your program?  
Finance and Revenue, and pro se
24. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.  
No
25. What do you rate as the most significant successes of your appellate mediation program to date?  
Beyond resolving over 1100 cases, it is the opportunity provided to parties to reach their own resolution
26. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?  
Getting more of the bar to know about and understand appellate mediation in the appropriate case
27. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?  
Overall reduces / redistributes resources, aids in efficiency of the Court and sharpens the focus of those cases that are adjudicated.
28. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.  
Please see attached
29. Has your program been evaluated? If so, could you share the results of the evaluation?  
Has not

Mediation Program Name: Commonwealth Court of Pennsylvania Mediation Program

Court: Commonwealth Court of Pennsylvania

Court Case Jurisdiction: Pennsylvania statewide, state and local government and agency appeals

Court Geographic Jurisdiction: Commonwealth of Pennsylvania

Name of Mediation Program Director/Administrator: Richard D. Procida, Esq.

Address: 1339 Chestnut St., Philadelphia, PA 19073

Telephone: 215-496-4970

Email: Richard.Procida@pacourts.us

Website: pacourts.gov

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1/23/12

Richard Procida  
Name

R. Procida  
Signature

Mediation Program Director  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

# IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In re: Order Establishing :  
Mediation Program : 126 M.D. No. 3

## ORDER

And Now, this 15th day of September, 1999, It Is Hereby Ordered that effective January 1, 2000 counseled appeals of orders of the courts of common pleas and counseled petitions for review of state administrative agency action filed in Commonwealth Court's appellate jurisdiction and counseled actions filed in the Court's original jurisdiction may be referred at the discretion of the Court to the Court's Mediation Program to facilitate settlement and otherwise to assist in the expeditious resolution of matters before the Court. Cases that have not been selected by the Court for mediation may be referred at any time to the Mediation Program at the request of counsel or at the direction of any en banc or three-judge panel of the Court.

(b) Tax appeals from orders of the Board of Finance and Revenue, which are now subject to a status conference program, and all pro se matters shall be exempt from the Mediation Program. Mediation shall be offered at no cost to the parties and shall be conducted by a senior or retired judge of the Court assigned on a periodic basis by the President Judge.

(c) It Is Further Ordered that within ten days after receipt of the notice of appeal, petition for review or complaint, the appellant, petitioner or plaintiff shall file with the Chief Clerk the required docketing statement on a form provided by the Court at the time of the notice of appeal, petition for review or complaint is filed. The appellant, petitioner or plaintiff shall also file a Statement of Issues with the docketing statement. The Statement of Issues shall be no more than two pages in length and shall set forth a brief summary of the issues and a summary of the case necessary for an understanding of the

nature of the appeal, petition for review or complaint. Service of the docketing statement and any attachments shall be made on all parties, and an original and one copy shall be filed with the Chief Clerk's Office along with a proof of service.

(d) Cases shall be screened for referral to mediation immediately upon the filing of the docketing statement and any other form prescribed by the Court setting forth the issues and a summary of the case. After a case has been selected for mediation, the Chief Clerk shall notify counsel for all parties by letter of the referral to the Mediation Program and of the name of the mediation judge assigned to conduct mediation. The mediation judge shall promptly contact counsel to establish the location, date and time for mediation.

(e) Within ten days of receiving notice of mediation, counsel shall provide the mediation judge with a mediation statement of no more than five pages, setting forth the positions of counsel as to the key disputed and undisputed facts and legal issues in the case and stating whether prior settlement negotiations have occurred. The mediation statement shall also identify any motions filed and their disposition; the mediation judge may dispose of only those motions related to scheduling or to the mediation process. In actions arising under the Court's appellate jurisdiction, counsel for the appellant or the petitioner shall attach as exhibits to the mediation statement a copy of the judgment or order on appeal and any opinion or adjudication issued by the common pleas court or agency. Copies of the mediation statement need not be served upon opposing counsel unless so directed by the mediation judge. Documents prepared solely for mediation and the notes of the mediation judge shall not be filed with the Chief Clerk.

(f) All cases referred to mediation shall remain subject to the Court's normal scheduling for briefing and/or oral argument. The Court's briefing and/or oral argument schedule shall not be modified by the Chief Clerk unless so directed by the mediation judge to accommodate mediation.

(g) All mediation sessions must be attended by counsel for each party with authority to settle the matter and, if required, such other person with actual authority to negotiate a settlement, whether involving the Commonwealth of Pennsylvania, a local government unit or an individual litigant. The mediation judge may at his or her discretion require the parties (or real parties in interest) to attend mediation. In cases involving the Commonwealth government, upon direction of the mediation judge, counsel shall have available someone from the appropriate agency with authority to settle who can be reached during mediation to discuss settlement if such person is not already required to be in attendance by the mediation judge. The mediation judge may in the alternative obtain the name and title of the government official or officials authorized to settle on behalf of the state or local government unit.

(h) No future mediation shall be conducted unless the mediation judge determines that further sessions are necessary to effectuate a settlement. The mediation judge assigned to mediate a case shall attend all future mediation sessions scheduled in the case. The mediation judge shall possess authority to impose any necessary sanctions for the failure of counsel to comply with the requirements of this order.

(i) The mediation judge shall not disclose the substance of the mediation settlement discussions and proceedings, and counsel likewise shall not disclose such discussions and proceedings to anyone other than to their clients or to co-counsel. No information obtained during settlement discussions shall be construed as an admission against interest, and counsel shall not use any information obtained during settlement discussions as the basis for any motion or application other than one related to the Court's briefing or argument scheduling. Where settlement is reached, counsel shall prepare a written settlement agreement and obtain all necessary signatures of the parties and counsel. The agreement shall be binding upon the parties to the agreement, and after execution counsel shall file a stipulation of dismissal within ten days thereof. Where necessary or upon the request of counsel the mediation judge

may enter an appropriate order approving the settlement and remanding the case to the tribunal below for its enforcement and/or implementation.

(j) Any case not resolved by mediation shall remain on the Court's docket and proceed as if mediation had not occurred. The mediation judge shall not participate in any decision on the merits of the case. Upon the termination of mediation either through settlement and dismissal or through a continuation of the case on the Court's docket, the mediation judge shall dispose of all documents obtained during mediation unless the mediation judge determines to retain any part of non-confidential documents until final disposition of a case. In any event, the mediation statements and any other confidential documents submitted to the mediation judge shall be destroyed immediately upon the termination of mediation.

(k) The Court's order establishing a Mediation Program shall be published in the *Pennsylvania Bulletin* and in legal newspapers throughout the Commonwealth prior to the effective date of the Mediation Program. The order shall be posted in the Chief Clerk's Office and a copy thereof shall be mailed to all counsel whose cases have been selected for mediation. The Court also shall amend its Internal Operating Procedures to incorporate the mediation procedures and shall give notice thereof simultaneously with notice of the Court's order establishing the Mediation Program. This order may be amended at the discretion of the Court.

#### Source

The provisions of § 67.71 adopted September 15, 1999, effective January 1, 2000, 30 Pa.B. 11; amended March 25, 2005, effective March 26, 2005, 35 Pa.B. 1880; amended March 7, 2011, effective March 7, 2011, 41 Pa.B. 1456. Immediately preceding text appears at serial pages (353613) to (353614), (310265) to (310266) and (323233).

# COMMONWEALTH COURT MEDIATION PROGRAM 2011 STATISTICAL REPORT

*As of 12/30/2011*

Year-To-Date

<u>Case Type</u>	<u>Referred</u> <u>in 2011</u>	+ <u>Carryover</u> <u>from 2010</u>	- <u>Resolved</u> <u>in 2011</u>	- <u>Not Resolved</u>	= <u>Pending</u>
Arbitration/Labor	1	1	0	0	2
Board of Claims	1	0	0	0	1
DEP	1	2	1	1	1
DOT	2	0	0	1	1
DPW	11	6	13	1	3
Eminent Domain	15	3	3	7	8
HRC/CSC	1	0	0	0	1
LCB	2	1	2	0	1
Local Agency	9	5	5	1	8
Local Tax	5	0	3	1	1
Miscellaneous	7	5	5	5	2
Original Jurisdiction	3	3	3	1	2
PBPP	0	0	0	0	0
PUC	2	1	3	0	0
RTKL	5	0	1	1	3
State License Boards	7	1	4	3	1
State/Loc Gov Tort	3	1	3	0	1
Summary/Criminal	2	0	0	1	1
Tax Sale	3	1	2	0	2
UC	0	0	0	0	0
Workers' Compensation	58	17	15	29	31
Zoning	27	4	8	3	20
<b>TOTALS</b>	<b>165</b>	51	<b>71</b>	55	90
		216		56%	
		Total Cases		Resolution Rate	

## COURT MEDIATION PROGRAM TOTALS SINCE INCEPTION 2000 - Present

Referred 2446	Resolved 1117	46%
		Resolution Rate

Survey Response:  
Pennsylvania  
Superior Court  
Eastern & Western  
Districts

STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established?

The Superior Court of Pennsylvania initiated its appellate mediation program as a full-time program in the Eastern District in late 2006. The program there actually got off to a real start during the first part of 2007. The program in the Western District was initiated as a part-time program in late 2008 and actually got off to a real start in January 2009.

2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?

The program was initiated through an Administrative Order by the then President Judge of the Court.

3. Are mediations ordered by the court or is mediation an optional service provided upon request?

The program is structured so that after the filing of an appeal, the Appellant is directed to file a mediation statement with the program mediator. The mediator reviews all mediation statements he or she receives and selects that cases the mediator determines to bring into the program. It is possible for the parties to request mediation, if not selected, however whether a case is then scheduled for mediation remains a matter that continues to be within the discretion of the mediator.

4. When did the program begin conducting mediations?

Mediations were first scheduled in the Eastern part of the Commonwealth in November 2006, and first scheduled in the Western part of the Commonwealth in December 2008.

5. How many civil appeals are administered by your court annually?

For calendar year 2010, there were 3,100 appeals filed. There were 3,468 terminated. I will supply the 2011 statistics when they become available. Civil matters include all civil cases, family cases and estates and trusts.

6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.

As noted the Appellant submits a mediation statement which is a general summary of the case and the issues. The mediator then selects cases for mediation. Once selected, participation

is mandatory. Once selected, the Appellant and Appellee receive a scheduling letter and instructions. Each side is required to submit a confidential position paper prior to the scheduled mediation. This is provided to the mediator, only, and not to the opposing side.

There are no formal criteria that guide case selection. Selection rests within the discretion of the mediator who generally considers the issues involved in the appeal, the history of the case, where the case is on the docket (this program is structured so as not to delay the appeal process; appeals are not put on hold pending the mediation outcome.)

Clearly, appeals from determinations that are substantially based on the exercise of discretion by the trial court, or based on credibility determinations are considered to be reasonable for purposes of possibly reaching a resolution. At the same time there are other matters where the appeal rests on a preliminary rulings, such as the outcome of Preliminary Objections, a Motion for Summary Judgment, or the issuance of a preliminary injunction, and those types of cases are considered and selected depending upon a range of factors. When selected they are most often chosen because the mediator believes there is a reasonable opportunity to go beyond the preliminary ruling to actually resolving the entire case.

7. How many cases were mediated in the most recent year?

In 2011 there were 95 cases mediated in the full time program in the East and 65 mediated in the part-time program in the West.

There were more cases actually selected, than mediated in both Districts. Some of the cases selected were removed by a mediator after further review and prior to scheduling, and in a number of instances cases were settled and discontinued by the parties prior to mediation taking place.

8. How many cases settled in mediation in the most recent year?

Eastern District full time program:  
Full settlements: 40      Partial settlements : Statistics not fully tracked

Western District, part-time program.  
Full settlements : 38      Partial settlements Statistics not fully tracked.

9. How does your program define a "partial settlement?"

A partial settlement is might be one in which some, but not all parties in a multi-party case settled out. It can also be one in which a large number of uses are raised on appeal and where some, but not all issues, are resolved, laving the Court with a more simple case to dispose of on the merits.

10. Does your program offer mediation in cases with self-represented parties?

If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?

The program is available to self-represented parties. As with all cases, selection rests within the discretion of the mediator. In determining whether to select a case the mediator, in both the East and the West, will consider factors such as the issue involved, the litigant's projected ability to understand the appellate process without the help of counsel, the ability of each side to articulate issues and be meaningfully engaged in the process. The mediator might also consider the extent to which litigation has taken place between the parties over the years prior to the appeal at issue.

Mediations involving self-represented parties have not been tracked as a separate statistic.

11. Who serves as mediators in your program? How many of such mediators are currently active in your program?

The initial mediators in the East and the West are experienced mediators with extensive training and particular expertise in mediation and other forms of ADR. Both are lawyers, though not practicing traditional law, and each has been active at a local and state level with bar association ADR Committees. One mediator has been involved in many national organizations related to mediation and ADR.

The Eastern District program also includes a part-time mediator who is a retired Judge of the Superior Court. She is a long-time member of the Judiciary. Prior to serving as a volunteer in the program she was required to take a minimum of thirty hours of basic mediation training.

12. What are the required qualifications for appellate mediators in your program?

The full-time mediator in the East and the part-time mediator in the West are paid by the Court. Though there was not specific criteria for selection, the Court based the selection on the long-time experience of each mediator and the mediator's ongoing involvement in the field. The Court was

committed to hiring mediators who were dedicated to mediation and ADR as their field of practice.

This program does not use attorney/pro bono volunteers, other than the mediator who is a retired member of the Superior Court, In that instance, her time is on a volunteer basis.

13. How are mediators selected or designated for a particular case?

The program mediator selects the cases.

14. Are your cases mediated by one mediator or are they co-mediated?

One mediator handles all of the cases in the Western District part-time program. In the Eastern District program, the primary mediator for the Court handles a large number of the cases, and a reasonable number of cases are co-mediated by the primary mediator and the Judge who mediates on a volunteer basis.

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

Program mediators in both the East and the West use all of the styles and approaches noted in this question. Technique and style varies depending upon the type of case, counsel involved and the issues being mediated. For the most part, the process is combination of facilitative and directive. The program does not provide for any type of formalized process of early neutral evaluation.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

The program has been a self-standing program, independent of the Court and with limited Court involvement. Each mediator files a report with the court indicating cases selected, cases resolved and cases not resolved and referred back to the Court of the ongoing appeal process. Mediations are confidential. Mediators do not report to the Court regarding anything that transpires in mediation. If a case proceeds to the ongoing appeal process, neither individual judges or panels are privy to whether a matter was mediated or to any component related to the mediation process.

17. What is the annual cost of the program?

The support staff who work with the program are existing employees of the Court who would otherwise have jobs with the Court if the program didn't exist or ceases to exist. This is likewise true with the space used for mediation. In the West the

physical space is already leased space by the Court and that leasing arrangement is not dependent upon the mediation program. In the west, mediations take place in the private office of the mediator.

The only additional cost for the program involves the compensation to the mediators which is under \$200,000 per year, and the cost of paper, postage, supplies, etc., all of which are minimal.

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?

The Eastern District program has one full-time staff member. The Western District program has one part-time staff member. The staff is responsible for sending out notices, scheduling cases, communication with counsel or self-represented parties, tracking statistics, etc. The support staff do not mediate cases.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.

Once a case is selected for mediation, participation is mandatory. There are instances where, after selection, the mediator may communicate with counsel as part of pre-mediation preparation and may decide a case is not appropriate. This may also happen after a review of the position papers that are filed. The mediator retains discretion to remove a case after selection. There is no real opt-out provision, however, without the consent of the mediator.

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons arising from the mediation process? If so, have such sanctions been imposed? Please describe.

There are no provisions for sanctions for failure to participate. In some instances this has presented a problem, particularly where one side appears and the other side does not, or counsel appears without his or her client. The incidence of this occurring has been minimal through the life of the program.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

Eastern District Program:

- |              |      |
|--------------|------|
| 1) Tort      | 40 % |
| 2) Contracts | 20 % |

- 3) Domestic 10 %
- 4) Foreclosures 10 %
- 5) Miscellaneous 20 %

Western District Program

- 1) Tort 10 %
- 2) Contracts/Commercial 10 %
- 3) Domestic 50 %
- 4) Estates/Trusts 20 %
- 5) Real Property 10 %

21. If you are able to provide settlement statistics per case type, please do so.

These statistics are not available.

22. What types of civil cases, if any, are ineligible for mediation in your program?

The program excludes criminal cases, quasi-criminal such as prisoner civil rights and habeas, and custody fast track cases. Appeals from Protection from Abuse determination are not specifically unqualified for the program, however, they are routinely passed over and not selected.

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

The program has not been significantly modified. One step that was taken was the establishment and entry of formal, internal operating procedures that are published on the Court's web site.

24. What do you rate as the most significant successes of your appellate mediation program to date?

The wide range of cases resolved. The Mediation Program has disposed of virtually all varieties of civil appeals—from high value money judgments to financially minor suits-in-equity. It has resolved domestic cases ranging from a simple support matter to complex equitable distribution and alimony were there have been complicated pension and business valuation disputes. Resolutions have included difficult matters in estates and major

boundary and mineral rights issues in real property cases. Counsel who have participated represent a broad range of attorneys from those working in large, major firms as well as a number of solo and small practitioners.

A hallmark has been the Program has been able to dispose of appeals in a far shorter time, at far less expense to the parties, in manners that are acceptable to the parties involved. For the Court, both highly complex, multi-party appeals have been settled or simplified. In the Eastern District program, a hallmark has been the highest original verdict appeal being settled for \$ 31,500,000. At the same time, numerous appeals have been settled for de minimis amounts. Virtually all cases reach results that cannot be achieved by a court of limited jurisdiction, a "Court of Error."

A hallmark of the program in the west has been the number of cases that have resulted in a resolution of not only the appeal, itself, but also a global settlement of companion cases not yet on appeal, and related matters still in the midst of the trial process. These global settlements have been essential to a resolution of the matter on appeal and, at the same time, they have saved the trial court of what would have been forthcoming, extensive litigation, and with that not occurring, these results have foreclosed other possible appeals to the Superior Court. These global resolutions have resulted in extensive litigation cost savings to the clients.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

A. The budgetary constraints courts are under to fully fund and develop these programs.

B. The actual lack of knowledge and sophistication by many members of the Judiciary about how mediation actually works and the depth of skill and time it takes to mediate these cases, particularly those where there are personal issues and litigants who have been engaged in contentious litigation for a number of years prior to the appeal.

C. How to help Courts actually develop a vision and organizational structure that supports program stability, and that embraces a philosophy of service to the public.

Our court has recently determined, for a number of reasons, (including, in part, but not at all solely to the budget), to terminate our program, effective, June 30, 2011. This

termination is, in no way related to any alleged lack of success or insufficient statistics. It merely reflects a policy change based on internal changes within the members of the Judiciary.

How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

The program has modestly reduced the number of cases contained within the workload of the Court, allowing the Court to give attention to additional cases. Whether the program has required additional resources can't be answered as the use of resources is really a matter of budget allocation and priority.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

You can access the internal operating procedures by going to the web site for the Pennsylvania Superior Court.

I have asked my staff person to send you a copy of a form mediation statement and the scheduling letters that contains directions regarding the filing of position papers and other matters.

28. Has your program been evaluated? If so, could you share the results of the evaluation?

The program has not undergone a formal evaluation. However, after a mediation, staff sends any participating counsel a simple form related to the evaluation for that session. This form, under the existing program, does not go to the parties, themselves. A spreadsheet that tracks the session evaluations in the western program is available if that would be useful to you.

Mediation Program Name: Pennsylvania Superior Court Mediation Program

Court: Pennsylvania Superior Court

Court Case Jurisdiction: Pennsylvania

Court Geographic Jurisdiction: Pennsylvania

Name of Mediation Program Director/Administrator:/Eastern Mediator: P. Douglas Sisk

Address: Suite 311, 530 Walnut Street, Philadelphia, PA 19106

Telephone: 215-560-2360

Email: [Douglas.Sisk@pacourts.us](mailto:Douglas.Sisk@pacourts.us)

Website: [www.superior.pacourts.us](http://www.superior.pacourts.us)

Name of Mediation Western District Mediator: Ann L. Begler

Address (mediation program): 310 Grant Street /suite 603, Pittsburgh, PA 15219

Telephone: 412-565-7579

Email: [Ann.Begler@pacourts.us](mailto:Ann.Begler@pacourts.us) or [abegler@aol.com](mailto:abegler@aol.com)

We hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: February 14, 2012

Mediator

Name: s/Douglas Sisk  
Program Director, Eastern District

Name: s/Ann L. Begler  
Western District Mediator

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

**SUPERIOR COURT OF PENNSYLVANIA**  
**Mediation Statement - Civil**

Pursuant to No. 2 Administrative Order of the Superior Court, dated September 29, 2008, counsel are required to file this Mediation Statement by December 29, 2011 to facilitate a determination whether this appeal may be subject to mediation. An original and one (1) copy are required. To insure confidentiality the Mediation Statement, and attachments, must be marked CONFIDENTIAL and sent *separately* to the Mediation Program, Superior Court of Pennsylvania, 310 Grant Street, Suite 603, Pittsburgh, PA 15219. This may not be submitted electronically. (Total statement is limited to no more than 2 pages, single-spaced. Counsel may utilize this form or attach a 2-page statement including the information required by this form.) DO NOT SEND A COPY OF THIS STATEMENT TO OPPOSING COUNSEL.

CAPTION:

SUPERIOR COURT NO.:

TRIAL JUDGE:

COUNTY: Allegheny

*Concise Summary of the Case*

Summarize the subject of this appeal, i.e., identify (1) the nature of the action; (2) the parties to this appeal; (3) the amount in controversy or other relief involved; and (4) the judgment or other action in the Court of Common Pleas from which this appeal is taken.

Identify and ATTACH to this statement a copy of any order, judgment, decision or opinion which is involved in this appeal.

CONCISE SUMMARY OF THE CASE (cont.)

Provide a short statement of the factual and procedural background which you consider important to this appeal:

Identify the issues to be raised on appeal:

This is to certify that this confidential Mediation Statement was mailed to the Director of the Mediation Program of the Superior Court of Pennsylvania

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signature of Counsel)

DO NOT SEND A COPY OF THIS MEDIATION STATEMENT TO OPPOSING COUNSEL.



THE SUPERIOR COURT OF PENNSYLVANIA  
COURT MEDIATION

SUITE 603  
310 GRANT STREET  
PITTSBURGH, PENNSYLVANIA 15219

ANN L. BEGLER, J. D.  
COURT MEDIATOR

(412) 565-7579  
Website: [www.superior.pacourts.us](http://www.superior.pacourts.us)

[Date]

Attorney Address

Attorney Address

**Re: Case Name**  
**Docket #**

Dear Counsel:

This appeal has been scheduled for **Mediation** in the Superior Court's mediation program for [Date], at [Time]. You are directed, per the Superior Court Guidelines, to file a **Confidential Position Paper** with me on or on or before [Date]. Instructions for filing the Confidential Position Paper are enclosed. If there is an Opinion from the lower court (Master or Judge) and it has not been included with the mediation statement, kindly include it with your position paper. If you believe there is particularly critical case law that supports your case you may include a copy of the case(s). Please remember, though, that your position paper is not intended to primarily argue your legal position; the purpose of your position paper is to have you focus on a range of settlement options as resolution is the goal of the mediation program.

Please note that **your clients are required to attend** the mediation session. In addition, if there are others who are not a formal party to the case, but who have significance in determining possible outcomes of the case, those persons are also required to attend. Likewise, any person not a party, but who has final authority to resolve and settle this matter must attend, in person. It is your responsibility to determine the identity of required non-party attendees and your responsibility to provide them with notice of the mediation. If you plan to bring a family member, new spouse, life partner, friend or other person not directly involved with the case, please advise both me and other counsel (or party in pro se cases) so everyone will know who to expect, and so we can consider, in advance, the role that person will have in the process and the extent to which attendance will be helpful. It is not unusual for our mediations to run through a lunch or dinner hour. We try not to take any type of long breaks for people to leave the mediation to go to a restaurant. While I often provide coffee, tea or soda, meals are not provided. Please feel free to bring snacks or a boxed meal if you are concerned about the length of time and meal interruptions.

Although the formal court mediation office is located in the Grant Building, the Mediation will be held at my regular mediation office located at 945 Liberty Ave., #7 Pittsburgh, PA 15222. Directions to this location are enclosed. You should plan your day anticipating this mediation may last from two to six hours. Please do not arrive more than 15 minutes in advance of your scheduled mediation. Our goal in this program is to help people reach a resolution within one scheduled session. While I will consider scheduling additional time in a case if it is very close to resolution, I cannot promise this will be possible. You and your client should come to the scheduled session prepared and ready to work hard to get to final understandings.

If you have already received a briefing schedule, or receive one prior to the mediation, you may request an extension for the filing of your brief until reasonable time after the mediation. While I cannot state with certainty that your request will be granted, I do believe the Court will be generally supportive of a possible resolution through mediation and, thus, the potential alleviation of the time and cost involved in filing briefs.

Please direct your calls and correspondence to my assistant, Lori Matson, at the Grant Building mediation office as all of the documentation and other relevant information stays at that office.

One more note regarding the scheduled mediation session: We have only a limited ability to re-schedule mediations once the scheduling notice goes out. While we would like to be able to work out the schedules with parties and counsel on each case, the volume of cases considered and the number scheduled don't permit significant flexibility. In order for the program to work well and not to have this program be a real delay in the appeal process, we need you to do everything possible to refrain from asking for the scheduled date to be changed. Due to the timing of positions papers, schedules, etc. if we are asked to change a date, we often do not have sufficient time in the process to put another case in its place.

I look forward to working with each of you and your clients and doing what I can to help everyone reach a mutually satisfactory resolution of this matter.

Kind regards,

Ann L. Begler  
Mediator

ALB/lmm  
Enclosures

**-- SUPERIOR COURT OF PENNSYLVANIA --**  
**Mediation Statement**

Pursuant to No. 2 Administrative Order of the Superior Court, dated September 29, 2008, counsel are required to file this Mediation Statement by \_\_\_\_\_, to facilitate a determination whether this appeal may be subject to mediation. An original and one (1) copy are required. To ensure confidentiality the Mediation Statement and attachments must be marked **CONFIDENTIAL** and mailed separately to the **Mediation Program, Superior Court of Pennsylvania, 310 Grant Street, Suite 600, Pittsburgh, PA 15219**. This may not be submitted electronically. (Total statement is limited to no more than two (2) pages, single-spaced. Counsel may utilize this form or attach a 2-page statement including the information required by this form.) **DO NOT SEND A COPY OF THIS STATEMENT TO OPPOSING COUNSEL.**

CAPTION:  
SUPERIOR COURT NO.:  
TRIAL JUDGE:  
COUNTY:

Concise Summary of the Case

Summarize the subject of this appeal, i.e., identify (1) the nature of the action; (2) the parties to this appeal; (3) the amount in controversy or other relief involved; and (4) the judgment or other action in the Court of Common Pleas from which this appeal is taken:

Identify and ATTACH to this statement a copy of any order, judgment, decision or opinion which is involved in this appeal.

CONCISE SUMMARY OF THE CASE (cont.)

Provide a short statement of the factual and procedural background which you consider important to this appeal:

Identify the issues to be raised on appeal:

This is to certify that this confidential Mediation Statement was mailed to the Director of the Mediation Program of the Superior Court of Pennsylvania this \_\_\_ day of \_\_\_\_\_ , 20\_\_.

(Signature of Counsel)

**DO NOT SEND A COPY OF THIS MEDIATION STATEMENT TO OPPOSING COUNSEL.**

**SUPERIOR COURT OF PENNSYLVANIA**  
**APPELLATE MEDIATION PROGRAM**

Evaluation

Our records indicate that you recently participated—as Counsel or pro se litigant—in a mediation session in an appeal to the Superior Court of Pennsylvania. As noted in our session, this Program is a recent innovation of the Court; it is intended to provide alternatives to the standard appellate process. We will appreciate your candid observations and evaluation of the mediation of your appeal. Your perceptions will help modify Program procedures and focus. We estimate that the Questionnaire will take less than 10 minutes to complete, but your thoughts will help determine the future design of the Program.

**GENERAL INFORMATION:**

<b>Docket No.:</b> [Optional]	<b>WDA</b>	<b>Caption:</b> [Optional]
<b>1. How did you become aware of the Mediation Program? (Please check all that apply.)</b>  Court Announcement?      Legal Newspaper?      Internet?      Official Court Forms?  Other?		
<b>2. Were the Mediation Statement instructions clear?</b> Is there anything you would change about the format of the Mediation Statement? (Please explain.)		
<b>3. If you contacted the Mediation Program for any reason, were you satisfied with the way your questions and/or concerns were handled? Yes? No?</b> (Please explain.)		
<b>4. Have you participated in mediation (in this case, or in other cases) in any other court?</b> Yes? No?  If Yes, in which Court(s)?  If Yes, how did this mediation compare with session(s) in other courts?		

**5. In general, do you believe that the Mediation Program is a valuable option in resolving appeals to this Court?**

5-(Strongly Agree) 4-(Agree) 3-(No Opinion) 2-(Somewhat Disagree) 1—(Strongly Disagree)

**6. Appellate mediation is useful only in some appeals.**

5-(Strongly Agree) 4-(Agree) 3-(No Opinion) 2-(Somewhat Disagree) 1—(Strongly Disagree)

Comments?

**7. Do you have thoughts on early identification of the best candidate cases for mediation at the appellate level?**

**COMMENTS ABOUT THIS APPEAL:**

1. Please evaluate the preparation, knowledge and skill of the Mediator with respect to this case, using the 1- 5 rating scale.

5-(Strongly Agree) 4-(Agree) 3-(No Opinion) 2-(Somewhat Disagree) 1—(Strongly Disagree)

A. The Mediator was familiar with the relevant facts and procedural history of this case.

5      4      3      2      1

B. The Mediator was knowledgeable about the pertinent case law that governed the trial court decision.

5      4      3      2      1

C. The Mediator was very familiar with appellate procedure, rules, jurisdiction, standards and scope of review.

5      4      3      2      1

D. The Mediator conducted the mediation in even-handed fashion, fairly representing the positions of each party, allowing the parties the freedom to discuss their case, both in open and in private sessions, and maintaining confidentiality.

5      4      3      2      1

E. In private conference, the Mediator candidly discussed strengths and weaknesses of the appeal, options for resolving the dispute, and possible negotiation offers to the opposing parties.

5      4      3      2      1
F. The Mediator facilitated a global settlement of multiple cases or issues in this Court or in other forums.
5      4      3      2      1
G. Other Comments:
2. Did this case settle? Yes. _____ No. _____ Further negotiation needed.** (Contact the Mediator)
3. If this case did not settle, why? (Check all that apply.) A. Legal posture of the case requires an Affirmance or Reversal by the Court. B. Novel question of law requires an opinion of the Court. C. Unbending, unyielding principled positions of the parties D. "Nothing to Lose" by pursuing appeal E. Malpractice suit potential; must pursue all remedies. F. Unable to bridge difference in settlement amounts. G. A settlement would be premature; inappropriate to settle <i>at this time</i> . H. Extreme personal anger, frustration among the parties. I. Other (Please explain.)
4. If this case did not totally settle: (Check all that apply.) A. The issues eventually briefed were simplified or reduced in number as a result of settlement discussions. B. There was a partial settlement. C. The Mediator helped resolve problems collateral to the merits.
5. Comments:
<b>Thank you for completing this Evaluation and returning it to the Mediation Program of the Superior Court. At your earliest convenience, please email it to <a href="mailto:MediationPIT@pacourts.us">MediationPIT@pacourts.us</a>, send it Appellate Mediation Program, Superior Court of Pennsylvania, 310 Grant Street, Suite 600, Pittsburgh, PA 15219, OR fax it to 412-565-7711. All answers are CONFIDENTIAL.</b>

Survey Response

# Rhode Island



# Appellate Mediation Program



## Contact Information

### APPELLATE MEDIATION PROGRAM

#### Office of Alternative Dispute Resolution

Rhode Island Supreme Court  
250 Benefit Street, Room 705  
Providence, Rhode Island 02903

Email: [AMP@courts.ri.gov](mailto:AMP@courts.ri.gov)

Phone: (401) 222-8661

Fax: (401) 222-4224

### ADDITIONAL FORMS

Online at [www.courts.ri.gov](http://www.courts.ri.gov)

#### Superior Court Clerk's Office

Light Judicial Complex (401) 222-3230  
Providence County

Kent County Courthouse (401) 822-6900  
Kent County

McGrath Judicial Complex (401) 782-4121  
Washington County

Murray Judicial Complex (401) 841-8330  
Newport County

*The Supreme Court is a court of last resort and is the final interpreter of state law. The Supreme Court has final jurisdiction over questions of law and equity, supervisory powers over other state courts, and general advisory responsibility to the Legislative and Executive branches of state government concerning the constitutionality of state laws. Chief Justice Paul A. Suttell serves as the executive head of the state judicial system.*

### TYPES OF CASES ELIGIBLE FOR MEDIATION

- Most civil cases that have been directly appealed from a trial court to the Supreme Court will be eligible for mediation. See Provisional Rule A as amended.

The following cases are ineligible:

- criminal cases
- family court appeals
- petitions for extraordinary relief, including prerogative writs
- applications for post-conviction relief
- petitions for habeas corpus
- prisoner litigation
- pro se cases
- juvenile cases

- The Court encourages parties in any civil case to request participation in the program on a voluntary basis.

### THE MEDIATION PROCESS IS CONFIDENTIAL

- Any statements made as well as any documents submitted in furtherance of mediation will be confidential. The only portion of the mediation process that is public is the fact that mediation took place and whether the case has been settled.

### MEDIATION BENEFITS ALL PARTIES

- Saves money and time
- Allows parties to control the outcome
- Ensures compliance
- Eliminates the risk of unfavorable rulings; and
- Inspires creative and realistic solutions

## WHAT IS THE APPELLATE MEDIATION PROGRAM?

- The Appellate Mediation Program is an initiative of the Supreme Court bench. Mediation and other innovative methods of alternative dispute resolution allow litigants to participate without the expense, time and contention of continued litigation.

## IS PARTICIPATION MANDATORY?

- Participation in appellate mediation sessions is mandatory, but settlement is voluntary.

## WHAT FORMS DO I NEED TO FILE?

- All parties (either through trial counsel or appellate counsel) are responsible for filing the Mediation Eligibility Form and, if applicable, the Confidential Mediation Statement in order for the Appellate Mediation Program to determine eligibility and appropriateness of your case for mediation.

## WHERE ARE THE FORMS LOCATED?

- These forms are located online at [www.courts.ri.gov](http://www.courts.ri.gov), and at the Clerk's Offices of the Superior Court, and should be sent to the Supreme Court Appellate Mediation Program at 250 Benefit Street, 7th floor, Room 705, Providence, RI 02903. Forms should not be filed at the Clerk's office.

## WHEN DO I FILE THE FORMS?

- Within twenty (20) days of filing a notice of appeal, all parties are required to submit a Mediation Eligibility Form, and if applicable, the Confidential Mediation Statement, to the Appellate Mediation Program.
- After reviewing the forms, the Appellate Mediation Program will attempt to schedule mediation sessions in eligible cases within thirty (30) days. Mediation sessions are scheduled to last at least one hour with additional sessions scheduled as needed.
- Mediation sessions are allowed to be rescheduled only once for good cause. Requests for rescheduling must be made at least seven (7) days before the scheduled session.



## HOW SHOULD I PREPARE FOR MEDIATION?

- Complete the mediation forms with direct and honest statements of facts and issues with the final goal of creatively resolving the dispute, outside of winning on appeal.
- Candidly assess the respective strengths and weaknesses of both sides' legal positions, and formulate your client's best and worst case scenarios.
- Understand and discuss your client's priorities, underlying interests, anticipated results and any emotional issues that may need to be addressed to progress the matter towards resolution.
- Determine the costs and time commitment of continued litigation and assess your client's ability and willingness to fund continued litigation in light of all risks present.
- Be prepared to suggest and consider multiple approaches to the problem that gave rise to the dispute. Imagine possible creative solutions and assist in brain-storming and problem-solving.
- Be prepared to negotiate in good faith and express your views on the case's merits and your clients' underlying interests and motivation.
- Obtain advance authority from your client to make any commitments as may reasonably be anticipated as a result of mediation.

## WHO WILL CONDUCT THE MEDIATION?

- Presently, eleven retired justices serve as mediators at no cost to the state. As the program progresses, other qualified mediators may be approved and added.
- The mediator-justice does not render a decision, but assists the parties in coming to a mutually agreeable solution by facilitating communication between the parties, assisting them in identifying their interests and needs, and aiding in the negotiation process. A mediator-justice who conducts a mediation that does not result in a resolution will not participate in the subsequent appeal.

## WILL MEDIATION DELAY THE APPEAL?

- No. Because mediation typically occurs before transcripts are ordered, the time period for ordering a transcript in cases eligible for mediation will be extended to sixty (60) days from the filing of the notice of appeal. Otherwise the usual timeline for an appeal applies.

## ARE THERE ANY SANCTIONS FOR FAILURE TO COMPLY?

- Yes. Failing to file mediation forms within twenty (20) days may subject the delinquent parties to sanctions.
- Sanctions may be imposed upon any party or counsel for failing to abide by Provisional Rule A, including the participation, documentation, attendance and confidentiality requirements.

## WHAT HAPPENS AFTER MEDIATION?

- If mediation is successful, the parties will be asked to finalize the settlement and withdraw the appeal. If not, the case proceeds according to normal appellate procedure.

## WHEN WAS THIS PROGRAM ENACTED?

- Effective October 1, 2003, the Appellate Mediation Program was implemented by Provisional Rule A of the Supreme Court Rules of Appellate Procedure.

## STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established?

The Rhode Island Supreme Court Appellate Mediation Program (AMP) was established in 2003 as a pilot program with limited cases and became a formal program in 2004.

2. What formal method, if any, was used to establish the program (e.g., rule, Administrative order, other)?

The program was established by Rhode Island Supreme Court Provisional Rule A (see attached)

3. Are mediations ordered by the court or is mediation an optional service provided upon request?

Participation in the Appellate Mediation Program is mandatory for most civil appeals, but cases may also request to participate in mediation voluntarily and/or the Court may order mediation.

4. When did the program begin conducting mediations?

October 2003 was the pilot program for the first two mediations. Other mediators joined after the program was fully established in 2004.

5. How many civil appeals are administered by your court annually?

Approximately 170 appeals are docketed annually.

6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.

The cases we take are civil appeals with the following exceptions:

- a.) Applications for post-conviction relief;
- b.) Petitions for habeas corpus;
- c.) Cases brought by prisoners in the custody of the Department of Corrections;
- d.) Cases in which one or more parties are not represented by counsel (unless specifically included at the direction of the Court or by order of a mediator-justice);
- e.) Appeals from the Family Court;
- f.) Juvenile cases;
- g.) Petitions for extraordinary relief, including all prerogative writs, provided, however, that a petition for a prerogative writ brought originally in this Court may be assigned to the Appellate Mediation Program by order of the Court at the time the prerogative writ is issued.

7. How many cases were mediated in the most recent year?

71 cases were mediated in 2011.

8. How many cases settled in mediation in the most recent year?

28 cases were settled in mediation.

Full settlements 28 Partial settlements N/A

9. How does your program define a "partial settlement?"

We do not record statistics on partial settlements.

10. Does your program offer mediation in cases with self-represented parties? If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?

No, cases involving a pro se litigant are not eligible for participation.

11. Who serves as mediators in your program? How many of such mediators are currently active in your program?

We currently have 10 retired Judges and Magistrates who are available to serve as mediators in our program when they are not recalled to the bench. Three are currently active in our program, but this number varies.

12. What are the required qualifications for appellate mediators in your program?

All current mediators are retired judges almost all of whom have completed basic skills mediation training with the Community Mediation Center of RI.

13. How are mediators selected or designated for a particular case?

Mediators are asked upon joining the program whether they have some preference or expertise in certain areas of the law; cases are also assigned based upon availability.

14. Are your cases mediated by one mediator or are they co-mediated?

New mediators will typically co-mediate with another more experience mediator until he/she feels ready to mediate solo.

15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.

We prefer that the mediators utilize a facilitative approach but often times the parties and counsel will request that the mediator become more evaluative and utilize his or her numerous years of judicial experience to objectively evaluate the case.

16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.

Director of the AMP is a non-judge, trained mediator and attorney who reviews and analyzes those cases that would be eligible and appropriate for inclusion in the program and then assigns the cases to available mediators in conjunction with one other staff person who is also a trained mediator. After the mediator/retired judge attends a mediation session with the parties he/she will report back to the staff person on the results and indicate whether follow up sessions should be scheduled.

17. What is the annual cost of the program?

Mediation through the Appellate Mediation Program is at no cost to the state or the parties appealing. Staff salaries are paid through the Judiciary's budget.

18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?

There are two staff persons who are certified and trained to mediate cases, but currently they do not mediate in our program.

19. If parties are ordered to mediation in your program, are they permitted to "opt-out" of mediation? Please describe the grounds permitted to opt-out.

No, absent exigent circumstances.

20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe.

a. Yes, per Rhode Island Supreme Court Provisional Rule A(8) "A party or counsel for a party who fails to participate in a mediation session after notice, or fails to provide the necessary preliminary documents and other information required for a meaningful mediation session, or fails to keep confidential any mediation statements or documents, or fails to participate in the mediation session in good faith, or otherwise fails to follow the provisions of this Rule, may be prohibited from filing further pleadings with the Clerk of the Supreme Court relevant to the pending appeal, or otherwise be subject to sanctions to be imposed after hearing by the Court or the mediator-justice. Sanctions may be brought either on motion by a party, or by the mediator-justice or the Court. Such sanctions may include monetary fines, costs, counsel fees, or orders that may deny or grant relief to appellant(s) or to appellee(s) as circumstances and justice may require."

b. Yes there are have been a few circumstances of sanctions filed for failure to comply with the Rules, but it happens rarely.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

1) Other Civil Actions	30%	31% settled
2) Personal Injury	25%	45% settled
3) Contract	22%	26% settled
4) Property	10%	22% settled
5) Wills & Trusts	10%	11% settled
6) Employment	9%	13% settled
7) Probate	2%	0% settled

If you are able to provide settlement statistics per case type, please do so.

22. What types of civil cases, if any, are ineligible for mediation in your program?

The following civil matters are ineligible:

- a.) Applications for post-conviction relief;
- b.) Petitions for habeas corpus;
- c.) Cases brought by prisoners in the custody of the Department of Corrections;
- d.) Cases in which one or more parties are not represented by counsel (unless specifically included at the direction of the Court or by order of a mediator-justice);
- e.) Appeals from the Family Court;
- f.) Juvenile cases;
- g.) Petitions for extraordinary relief, including all prerogative writs, provided, however, that a petition for a prerogative writ brought originally in this Court may be assigned to the Appellate Mediation Program by order of the Court at the time the prerogative writ is issued.

23. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

Minor changes such as a rule change to sanctions in 2006 and a rule change to transcripts and transmittal of the record in 2009. See attached.

24. What do you rate as the most significant successes of your appellate mediation program to date?

Maintaining a disposition rate near 50% over the past 8 years.

25. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

Some challenges that we face are lack of timely compliance by counsel to send in mediation forms, scheduling issues, incomplete information provided by counsel/parties, and a general lack of understanding about the process.

26. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

The program has reduced the workload of the court and has had a positive effect on the courts. No perceived need for additional judicial resources.

27. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

See attached.

28. Has your program been evaluated? If so, could you share the results of the evaluation?

This office distributes evaluation forms at the conclusion of each mediation session to be completed by counsel or parties in an effort to obtain data and continue improvements to the program. There are a number of questions asked about the

process. Overall for 2010, 92% of those surveyed indicated that they would recommend this program to others.

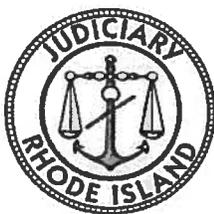
**Mediation Program Name: Rhode Island Supreme Court Appellate Mediation Program**  
**Court: Rhode Island Supreme Court**  
**Court Case Jurisdiction: Supreme Court (Highest Appellate Level)**  
**Court Geographic Jurisdiction: Rhode Island**  
**Name of Mediation Program Director/Administrator: Erika Kruse Weller, Esq.**  
**Address: 250 Benefit Street, Providence, RI 02903**  
**Telephone: 401-222-8661**  
**Email: amp@courts.ri.gov**  
**Website: www.courts.ri.gov**

*I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.*

Date: 1/17/2012

Erika Kruse Weller  
Name  
[Signature]  
Signature  
Director, Alternative Dispute Resolution  
Title  
*Office of*

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.



RHODE ISLAND SUPREME COURT  
APPELLATE MEDIATION PROGRAM

**MEDIATION ELIGIBILITY FORM  
AND CONFIDENTIAL MEDIATION STATEMENT**

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INSTRUCTIONS

This is a two-part, double-sided form. Part I determines the eligibility and appropriateness of your case for mediation. Part II applies to eligible cases only and contains confidential information about your case in order to assist the mediator in a resolution as well as an authorization to mediate.

1. Pursuant to Provisional Rule A as amended, all parties must complete this form and submit it to the Supreme Court Appellate Mediation Program within twenty (20) days of filing a Notice of Appeal. All parties must send an original and two copies of Part I to the Appellate Mediation Program and one copy to all opposing counsel.
2. If your case is not eligible for mediation pursuant to Provisional Rule A as amended, you need not complete Part II of this form. Send the original and two copies only of Part I to the Appellate Mediation Program and one copy to opposing counsel.
3. If your case is is eligible for mediation, you are required to complete Part II of this form as well. While Part I of the attached form is to be shared with opposing counsel, Part II provides parties an opportunity to inform only the mediator of additional information that could lead to resolution. Candor and honesty are strongly encouraged.
  - a. Complete fully Part II (the confidential mediation statement) inclusive of the confidentiality and negotiation authorization section. Attach copies of the relevant orders, memoranda, and opinions from which this appeal has been taken. If you are the appellant(s) or cross-appellant(s), you are required to attach copies of the trial court's written decision(s) or order(s).
  - b. Send the original and two copies of the form to the Appellate Mediation Program at the address indicated. Retain a copy to bring to the mediation session when assigned. **Do NOT send a copy of Part II (the confidential mediation statement) to opposing counsel.**
4. If after submission of your statements, it is determined that your case is not eligible or not appropriate for mediation, the parties will be sent notification by the Appellate Mediation Program that the case has not been selected.
5. If after submission of your statements, your case is deemed eligible and appropriate for mediation, the Appellate Mediation Program will send notice of the scheduled session to all parties. Please make every effort to have counsel and clients available on the assigned date and time. **MEDIATION SESSIONS ARE ONLY ALLOWED TO BE RESCHEDULED ONCE FOR GOOD CAUSE. A request to reschedule must be made at least seven (7) days before the session.**
6. To adequately prepare for mediation, counsel should become fully aware of his/her client's interests, goals, and needs and acquire appropriate authority to participate in the mediation conference and the potential settlement. Counsel should further educate his/her client regarding the mediation process and its possible outcomes. We strongly suggest that you refer to the Appellate Mediation Program's "Mediation Tip Sheets" for counsel and clients in preparation for your session.
7. **Please note that during the Appellate Mediation Process the Appellate Rules of Procedure are NOT suspended; only the time within which to order the transcript and transmit the record is extended, as per Provisional Rule A.** Should you need additional time, it is recommended that you file a motion with the Court for an extension.



**RHODE ISLAND SUPREME COURT APPELLATE MEDIATION PROGRAM**  
**PART I. MEDIATION ELIGIBILITY FORM** *Continued*

HISTORY OF SETTLEMENT NEGOTIATIONS, IF ANY (Please include a listing of all demands and counteroffers)	
DESCRIPTION OF MONETARY, PHYSICAL INJURY, OR ANY OTHER DAMAGES UPON WHICH THE CLAIM FOR COMPENSATION OR EQUITABLE ACTION IS BASED	
OUT-OF-POCKET EXPENSES, IF ANY, UPON WHICH THE CLAIM IS BASED	
PLEASE LIST NAMES AND ADDRESSES OF ALL OTHER COUNSEL INVOLVED IN THIS MATTER AND THE PARTY THAT HE OR SHE REPRESENTS	
ARE YOU COURT EXCUSED AT ANY TIME DURING THE NEXT 3 MONTHS, AND IF SO PLEASE INDICATE DATES?	
SIGNATURE	DATE

\*If this appeal fits any one of the listed ineligibility categories, you need not complete Part II of this form.

Send a copy of Part I to opposing counsel and the original and two copies to the Appellate Mediation Program, Rhode Island Supreme Court, 250 Benefit Street, Providence, Rhode Island 02903 Telephone: (401)222-8661.

**If your case is eligible for mediation, please complete Part II.**

RHODE ISLAND SUPREME COURT APPELLATE MEDIATION PROGRAM  
**PART II: CONFIDENTIAL MEDIATION STATEMENT AND AUTHORIZATION**

**FILL OUT PART II ONLY IF YOUR CASE IS ELIGIBLE FOR MEDIATION**  
**This form is for the use of the mediator only – DO NOT SEND COPIES TO COUNSEL**

<b>CASE NAME:</b>	<b>TRIAL COURT CASE NUMBER:</b>
<b>NAME OF COUNSEL FILING STATEMENT FOR MEDIATION SESSION</b>	<b>COUNSEL FOR (NAME OF PARTY)</b>
PLEASE DESCRIBE WHY PAST EFFORTS TO RESOLVE THIS DISPUTE HAVE BEEN UNSUCCESSFUL	
OTHER THAN WINNING ON APPEAL, WHAT ARE YOUR CLIENT'S TOP PRIORITIES/INTERESTS IN ORDER OF IMPORTANCE?	
OTHER THAN WINNING ON APPEAL, WHAT WOULD BE SOME POSSIBLE SOLUTIONS TO THIS CASE?	
PLEASE PROVIDE A LIST OF POTENTIAL OR ACCEPTABLE OUTCOMES TO THE MEDIATION SESSION	
ARE THERE ANY OTHER RELATED ISSUES OR RELEVANT INFORMATION THAT WOULD ASSIST THE MEDIATOR IN HELPING TO RESOLVE THIS CASE?	
LOWEST ACCEPTABLE MONETARY SETTLEMENT VALUE	HIGHEST ACCEPTABLE MONETARY SETTLEMENT VALUE
PLEASE LIST IMPORTANT FACTORS AFFECTING YOUR CLIENT'S CHANCES FOR SUCCESS ON APPEAL	

Attach a copy of the relevant order(s), memoranda, and opinions from which this appeal has been taken to assist in the mediator's understanding of this matter. If you are the appellant(s) or cross-appellant(s), you are required to attach a copy of the trial court's written decision(s) or order(s).

**Counsel may submit additional sheets as necessary to supplement this form.**

*Turn over* ↪

RHODE ISLAND SUPREME COURT APPELLATE MEDIATION PROGRAM

**CONFIDENTIALITY REQUIREMENT AND NEGOTIATION AUTHORIZATION**

I hereby agree that any and all documents submitted and statements made in furtherance of mediation, including, but not limited to, the content of this mediation eligibility form, mediation statement and any attachments thereto, and any relevant memoranda or supporting documentation relied upon during the course of the mediation session by counsel, any party or the mediator shall remain confidential. My client(s) further agree(s) not to subpoena or otherwise subject the mediator, staff members, or records of the Appellate Mediation Program to any court proceedings, lawsuits or other legal actions related to the mediation process or its outcome.

My client(s) agree to participate in mediation, and I am authorized to participate and negotiate on behalf of my client(s) with full authority to make and/or accept offers. If I am not so authorized at the time of mediation, I will make arrangements to have my client(s) or authorized representative(s) available in person or by telephone at the time of the mediation session.

I understand, and my client(s) have been informed that, even if this case proceeds to mediation, it is subject to all applicable time limitations and requirements as set forth in the Rhode Island Supreme Court Rules of Appellate Procedure, absent an Order from the Court. If an agreement is reached, the case will be withdrawn and appropriate documentation promptly filed with the Court. Any agreement reached during mediation will have the full force and effect of a contract. I understand and my client(s) have been informed that failure to abide by the above requirements and/or Provisional Rule A may result in sanctions.

I certify that a copy of the foregoing confidential mediation statement was executed truthfully and accurately to the best of my knowledge and a copy provided to the Appellate Mediation Program, Rhode Island Supreme Court, 250 Benefit Street, Providence, Rhode Island 02903.

PRINT NAME: _____	Counsel for: _____
CASE NAME: _____	CASE NUMBER: _____
SIGNATURE: _____	DATE: _____

**Do NOT send a copy of Part II to counsel.**  
Send this original form (and any attachments) and two complete copies to:

Appellate Mediation Program  
Rhode Island Supreme Court  
250 Benefit Street  
Providence, Rhode Island 02903

Telephone: (401)222-8661  
[www.courts.ri.gov](http://www.courts.ri.gov)

## RHODE ISLAND SUPREME COURT APPELLATE MEDIATION PROGRAM

### WHAT YOU NEED TO KNOW AS A CLIENT

**What is appellate mediation?** Appellate mediation is a process designed to dispose of a case pending before the Supreme Court through negotiation, compromise and agreement by the parties. The court does not decide the case outcome- the parties do.

**How does mediation work?** You and the other party (parties) to the case on appeal meet with the mediator to discuss the possibility of settlement by agreement. At this meeting, the mediator discusses the facts, the history of the case and the applicable law with you and your attorney separately or sometimes with the other side present. Such discussions enable both parties to tell their sides of the contested matter to a neutral legal expert with the aim of seeing whether common ground exists upon which to structure a compromise settlement.



**How does mediation differ from a trial?** The most important difference involves your own control over the case. When parties decide to resolve their disputes through litigation, they give up control of the case and allow the Supreme Court to decide the matter. Parties at mediation on the other hand, retain complete control of their case; they are free to negotiate a settlement through compromise by give and take but are not forced to do so. In addition, any information the parties want to present to the mediator is allowed. The rules governing limitations on evidence simply don't apply. Third, at mediation, a party can, and often does, meet with the mediator privately and confidentially (unless the party instructs otherwise). Such sharing of information is not only allowed, it is a necessary part of successful mediation.

**What is the role of the mediator?** Although your mediator is a retired judge, at mediation he or she assumes a totally different role. Unlike a judge hearing your case in court, the mediator-justice does not decide the case, does not decide what facts are true, and he or she issues no orders without the approval of the parties. The mediator's function is to hear the parties, to facilitate the sharing of information when authorized, and most importantly to see whether the respective wants or needs of the parties are such that a compromised settlement is possible. If asked, a mediator may give his or her opinion of the merits of the case, but in such cases the opinions are given privately to a party so free expression and frank exchanges can take place.

**What is the role of your attorney?** As at trial, your attorney at mediation remains your advocate. At mediation however, his or her function changes from that of proponent and interrogator to a negotiator and compromise seeker. The difference is critical and involves looking at the other party not as "the enemy" but as a fellow negotiator with whom you have something in common, such as an interest in settling the case. For mediation to succeed, your lawyer and you must discard "the winner-loser" fixation which is the denominator at trial. This involves you and your attorney keeping an open mind to any settlement offered at mediation that accurately reflects possible risks and rewards. In the end, only you can decide if what is offered in settlement will satisfy you, and whether to continue on or end the matter.



**What are the advantages of a mediated settlement of your case?** Few cases on appeal are crystal clear and typically each party has facts or law that could support their position. Neither side can really know for sure whether they will win the case on appeal. The advantage of settling at mediation is that both sides leave with something they want, whereas if the Court decides, there is a winner and a loser. And in some cases, the Court decides not to give everything the winning party wanted. Settling at mediation saves time and money; it allows the parties to put the matter at issue behind them quickly and to get on with the rest of their lives.

**What does it take for mediation to succeed?** Each party must be truly open to settlement. Each must understand both the risks involved in continuing the case for decision by the Court and the rewards that come with a compromise based on mutual needs and wants.

**Is mediation mandatory and what happens if mediation fails?** Yes. All parties and attorneys must deal and bargain with each other in good faith at the mediation meeting. If you fail to reach an agreement, your case will continue on appeal before the Supreme Court.

**Can I still settle my case by agreement if mediation fails?** Yes. You can and should continue to seek settlement through compromise until the Court renders its decision.

## RHODE ISLAND SUPREME COURT APPELLATE MEDIATION PROGRAM



### HOW SHOULD COUNSEL PREPARE FOR MEDIATION?

Mediation is an opportunity for parties to craft their own resolution to an underlying conflict. The Mediator does not make any decisions, but serves as a facilitator to reframe the conflict, identify the underlying interests that gave rise to the dispute, and assist the parties in formulating their own mutually acceptable agreement.

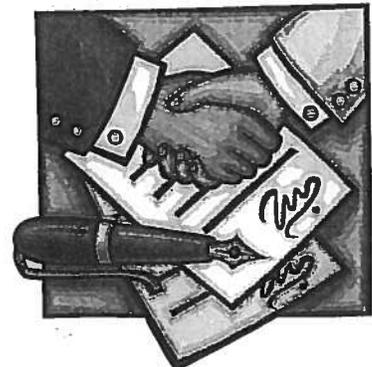
Mediation does NOT work within the typical confines of the court process where there is a winner and a loser. Mediation is limited only by the creativity and imagination of the parties. An agreement that reaches far beyond the limited appellate powers of the court can be fashioned by the parties to meet their own needs.

In order for an agreement to be reached by the parties, it is important to move beyond the pending litigation and the appellate issues at hand, and refocus back to the facts that gave rise to the initial dispute. Thinking outside the context of litigation, try to determine the interests that lie behind the legal positions. Interests do NOT include "winning on appeal." That is a legal position. An interest includes the underlying needs, desires, concerns, and fears important to each side. Ask yourself and your client the following questions:

- **What interest of my client was affected that made him/her/it originally file suit?**
  - Examples: client wanted access to property, client was injured, client was owed money, business relationship deteriorated, lack of respect or acknowledgement of a problem, etc.
- **Outside of winning on appeal, what would be the ideal solution to this issue? What is ultimately important to my client in the long run?**
  - Examples: reestablishing a business relationship, ending a relationship, receiving compensation, obtaining respect and/or acknowledgment, ability to develop property, etc.
- **What are the other side's possible interests?**
  - Examples: maintaining the business relationship, paying the least amount of money, preserving his/her/its reputation, maintaining character of neighborhood, resolving issue quickly, etc.
- **Other than taking our chances on appeal, what could happen if we don't settle?**
  - Examples: build elsewhere, find a substitute, lose the opportunity, leave empty-handed, etc.

Once you determine the underlying interests of your client, see if you can think of some creative solutions or options that may address the underlying needs. It is important to think OUTSIDE the context and limitations of litigation. Instead, focus on the resources or potential collective resources available to each client irrespective of pending litigation. Rather than listing demands and possible concessions, more options are generated if the parties are forthcoming about their underlying concerns and what they ultimately hope to achieve. Discuss these with your client prior to the session and give your client an opportunity to evaluate potential possibilities that extend beyond relief that the Court could provide.

Bring all options to the mediation table and be prepared to suggest them. Be sure to allow sufficient time for the mediation session and for follow up sessions. Encourage your client to consider that the he/she/it has the opportunity to participate in the resolution of the case and have it resolve quickly, but would not if the appeal continued.



## PROVISIONAL RULE A – MEDIATION SESSION PROCEDURES

**(1.) Purpose of the Rule.** The purpose of this rule is to afford a meaningful opportunity to the parties in all eligible civil appeals to achieve a resolution of their disputes in a timely manner as early in the appellate process as feasible through the assistance of the Supreme Court Appellate Mediation Program and with the help of designated mediators.

**(2.) Eligibility.** All civil cases that have been appealed from a trial court will be eligible for participation in this program with the following exceptions:

- a.) Applications for post-conviction relief;
- b.) Petitions for habeas corpus;
- c.) Cases brought by prisoners in the custody of the Department of Corrections;
- d.) Cases in which one or more parties are not represented by counsel (unless specifically included at the direction of the Court or by order of a mediator-justice);
- e.) Appeals from the Family Court;
- f.) Juvenile cases;
- g.) Petitions for extraordinary relief, including all prerogative writs, provided, however, that a petition for a prerogative writ brought originally in this Court may be assigned to the Appellate Mediation Program by order of the Court at the time the prerogative writ is issued;

Criminal cases will not be included in the Appellate Mediation Program. Criminal cases will be construed to include cases on review from traffic tribunals of the state or municipalities, or adjudication of offenses by municipal courts, however designated.

The Appellate Mediation Program shall use its discretion in determining the assignment and scheduling of civil cases that meet the requirements for eligibility and are appropriate for mediation. Any civil case that has been appealed from the trial court may be directed by the Court to participate in the Appellate Mediation Program.

At any time during the appellate process, any party in a civil case may request participation in the program on a voluntary basis.

**(3.) Mediators.** Mediators will be designated retired justices of the Supreme Court, retired justices or judges of trial courts, other judges, or persons who may from time to time be designated by the Chief Justice in a particular proceeding.

**(4.) Modifications of Procedures Relating to Cases Eligible for Mediation.** Within 20 days of filing a notice of appeal, all parties shall complete a mediation statement on a form provided by

the Clerk of the Superior Court to be filed with the Appellate Mediation Program.

The mediation eligibility portion of the form (Part I) shall enable the Appellate Mediation Program to determine whether the case is eligible and appropriate for mediation, and shall include the procedural history of the case, including the type of judgment entered, the amount of any monetary judgment and/or injunctive relief, the facts giving rise to the initial dispute, the history of negotiation, including any demand(s) that have been transmitted by the plaintiff(s), as well as any counteroffer(s) that have been made by the defendant(s). Counsel for the plaintiff(s) or other claimant(s) will include a list of out-of-pocket expenses upon which the claim(s) for compensation is based in whole or in part, as well as a description of physical and other injuries upon which the claim(s) for compensation is based. An original and two copies of the mediation eligibility portion of the form must be provided to the Appellate Mediation Program and one copy must be provided to all opposing counsel.

If the case is eligible for mediation, the parties shall also include a confidential mediation statement (Part II) with the mediation eligibility form to be filed with the Appellate Mediation Program. The confidential mediation statement shall include significant factors that could affect the party's chances of prevailing on appeal, a description of why past efforts at negotiation have failed, the priorities of the parties and possible acceptable outcomes to the mediation process. The statement should be sufficiently detailed to enable the mediator-justice to determine the areas of agreement and disagreement and to consider any other relevant information that would assist the mediator in the resolution of the dispute. To maintain the confidentiality of the mediation process, the confidential mediation statement shall be sent only to the Appellate Mediation Program and shall not be provided to opposing counsel. Counsel may supplement a mediation statement with additional relevant information at any time prior to the mediation session.

As a condition for participation in mediation, the parties shall include a statement that counsel has been authorized to negotiate on behalf of the client(s), with full authority to make and/or accept offers. If counsel is not so authorized, arrangements must be made to have the client(s) or authorized representative(s) available at the mediation session, or available for consultation by telephone at the time of the mediation session. At any time during the mediation process, the mediator-justice may request the record be transferred for reference at his or her discretion.

In the event that the judgment has not included all parties or all claims for relief, a judgment shall be requested in the trial court pursuant to Rule 54(b).

**(5.) Ordering of Transcript, Transmission of the Record, and Filing of Briefs.** In order to expedite the mediation process and spare the parties as much initial expense as possible, the ordering of the transcript in respect to cases eligible for and referred to mediation, shall be extended to a date sixty (60) days from the filing of the notice of appeal, and the time for transmittal of the record of the trial court to the Supreme Court shall be extended to a date sixty (60) days from the date of the ordering of the transcript. This extension may be modified by special order issued by the mediator-justice or any other justice of the Supreme Court. After the mediation session, the mediator-justice may make such order as may be appropriate in respect to the ordering of the transcript and the filing of briefs or memoranda in the event that the case is not settled. The full record of the case shall then be filed in the office of the Clerk of the Supreme Court."

**(6.) Mediation Session.** At the time of the mediation session, counsel for the parties should have had a prior meeting with their clients and opposing parties in order to seek as much agreement on issues, including settlement issues as possible. Counsel should have obtained

authority from their client(s) to make demands and counteroffer(s) to the fullest extent possible. Client(s) and/or representatives of client(s) should be available at the mediation session or by telephone in order to furnish additional authority that may be required in order to achieve a successful mediation in the course of the session.

**(7.) Confidentiality.** All documents filed, and statements made in furtherance of mediation, including, but not limited to, the history of negotiation, listing of out-of-pocket expenses, injuries, responses by the parties, counteroffers, and memoranda relating to the narrowing of issues, will be confidential. The only portion of the mediation process that will be public is the fact that the session took place and that the case has been settled, if such a result is reached.

**(8.) Sanctions.** A party or counsel for a party who fails to participate in a mediation session after notice, or fails to provide the necessary preliminary documents and other information required for a meaningful mediation session, or fails to keep confidential any mediation statements or documents, or fails to participate in the mediation session in good faith, or otherwise fails to follow the provisions of this Rule, may be prohibited from filing further pleadings with the Clerk of the Supreme Court relevant to the pending appeal, or otherwise be subject to sanctions to be imposed after hearing by the Court or the mediator-justice. Sanctions may be brought either on motion by a party, or by the mediator-justice or the Court. Such sanctions may include monetary fines, costs, counsel fees, or orders that may deny or grant relief to appellant(s) or to appellee(s) as circumstances and justice may require.

**(9.) Effective Date.** This amended provisional rule shall become effective August 1, 2004 and any rule inconsistent with this provisional rule shall be superseded hereby.

Article I.  
Supreme Court Rules of Appellate Procedure

Provisional Rule A As Amended

Mediation ~~Conference~~ Session Procedures

A(1.) Purpose of the Rule. The purpose of this rule is to afford a meaningful opportunity to the parties in all eligible civil appeals to achieve a resolution of their disputes in a timely manner as early in the appellate process as feasible through the assistance of the Supreme Court ~~Office of Mediation~~ Appellate Mediation Program and with the help of designated mediators.

A(2.) Eligibility. All civil cases that have been appealed from a trial court will be eligible for participation in this program with the following exceptions:

- a.) Applications for post-conviction relief;
- b.) Petitions for habeas corpus;
- c.) Cases brought by prisoners in the custody of the Department of Corrections;
- d.) Cases in which one or more parties are not represented by counsel (unless specifically included at the direction of the Court or by order of a ~~mediation~~ mediator-justice);
- e.) Appeals from the Family Court ~~involving the termination of parental rights~~;
- f.) Juvenile cases;
- g.) Appeals from the Family Court in which ~~child custody is the sole or primary~~ issue;

h.)-Petitions for extraordinary relief, including all prerogative writs, provided, however, that a petition for a prerogative writ brought originally in this Court may be assigned to the Appellate Mediation Program by order of the Court at the time the prerogative writ is issued;

i.) Criminal cases will not be included in the Appellate Mediation Program. Criminal cases will also be construed to include cases on review from traffic tribunals of the state or municipalities, or adjudication of offenses by municipal courts, however designated.

The Appellate Screening Unit Mediation Program shall use its discretion in determining the assignment and scheduling of civil cases that meet the requirements for eligibility and are appropriate for mediation. Any civil case that has been appealed from the trial court may be directed by the Court to participate in the Appellate Mediation Program.

At any time during the appellate process, any party in a civil case may request participation in the program on a voluntary basis.

A(3.) Mediators. Mediators will be designated retired justices of the Supreme Court, retired justices or judges of trial courts, other judges, or other persons who may from time to time be designated by the Chief Justice in a particular proceeding. ~~Such persons may be retired justices or judges of trial courts or other judges as designated by the Chief Justice in a particular proceeding.~~

A(4.) Modifications of Procedures Relating to Cases Eligible for Mediation. Within ~~10~~ 20 days of filing a notice of appeal, ~~the appellant(s)~~ all parties shall complete a mediation statement on a form provided by the Clerk of the Superior Court ~~or Family~~

~~Court to be filed with the Appellate Screening Unit Mediation Program. Within 10 days of filing of the appellant's mediation statement, the appellee(s) shall file a responsive mediation statement on a form provided by the Clerk of the Superior Court or Family Court with the Appellate Screening Unit.~~

The mediation eligibility portion of the form (Part I) shall enable the Appellate Mediation Program to determine whether the case is eligible and appropriate for mediation, and shall will include the procedural history of the case, including the type of judgment entered, the amount of any monetary judgment and/or injunctive relief, the facts giving rise to the initial dispute, the history of negotiation, including any demand(s) that have been transmitted by the plaintiff(s), as well as any counteroffer(s) that have been made by the defendant(s). Counsel for the plaintiff(s) or other claimant(s) will include a list of out-of-pocket expenses upon which the claim(s) for compensation is based in whole or in part, as well as a description of physical and other injuries upon which the claim(s) for compensation is based. ~~A copy~~ An original and two copies of the mediation eligibility portion of the form must be provided to the Appellate Screening Unit Mediation Program and one copy must be provided to all opposing counsel.

If the case is eligible for mediation, the parties shall also include a confidential mediation statement (Part II) with the mediation eligibility form to be filed with the Appellate ~~Screening Unit~~ Mediation Program. The confidential mediation statement shall include significant factors that could affect the party's chances of prevailing on appeal, a description of why past efforts at negotiation have failed, the priorities of the parties and possible acceptable outcomes to the mediation process. The statement should be sufficiently detailed to enable the mediator-justice to determine the areas of agreement

and disagreement and to consider any other relevant information that would assist the mediator in the resolution of the dispute. To maintain the confidentiality of the mediation process, the confidential mediation statement shall be sent only to the Appellate ~~Screening Unit~~ Mediation Program and shall not be provided to opposing counsel. Counsel may supplement a mediation statement with additional relevant information at any time prior to the mediation session.

As a condition for participation in mediation, the parties shall include a statement that counsel has been authorized to negotiate on behalf of the client(s), with full authority to make and/or accept offers. If counsel is not so authorized, arrangements must be made to have the client(s) or authorized representative(s) available at the ~~courthouse mediation session~~ session, or available for consultation by telephone at the time of the mediation ~~conference session~~ session. At any time during the mediation process, the mediator-justice may request the record be transferred for reference at his or her discretion.

In the event that the judgment has not included all parties or all claims for relief, a judgment ~~will be entered~~ shall be requested in the trial court pursuant to Rule 54(b).

A(5.). Ordering of Transcript and Filing of Briefs. In order to expedite the mediation process and spare the parties as much initial expense as possible, the ordering of the transcript in respect to cases eligible for and referred to mediation, shall be extended to a date sixty (60) days from the filing of the notice of appeal. This extension may be modified by special order issued by the mediator-justice or any other justice of the Supreme Court. After the mediation session, the mediator-justice ~~shall~~ may make such order as may be appropriate in respect to the ordering of the transcript and the filing

of briefs or memoranda in the event that the case is not settled. The full record of the case shall then be filed in the office of the Clerk of the Supreme Court.

A(6.) Mediation Conference Session. At the time of the mediation ~~conference session~~, counsel for the parties should have had a prior meeting with their clients and opposing parties in order to seek as much agreement on issues, including settlement issues as possible. Counsel should have obtained authority from their client(s) to make demands and counteroffer(s) to the fullest extent possible. Client(s) and/or representatives of client(s) should be available at the ~~courthouse~~ mediation session or by telephone in order to furnish additional authority that may be required in order to achieve a successful mediation in the course of the ~~meeting session~~.

A(7.) Confidentiality. All documents filed, and statements made in furtherance of mediation, including, but not limited to, the history of negotiation, listing of out-of-pocket expenses, injuries, responses by the ~~defendant(s)~~ parties, counteroffers, and memoranda relating to the narrowing of issues, will be confidential. The only portion of the mediation process that will be public is the fact that the ~~conference session~~ session took place and that the case has been settled, if such a result is reached.

A(8.) Sanctions. A party or counsel for a party who fails to participate in a mediation ~~conference session~~ session after notice, or ~~who~~ fails to provide the necessary preliminary documents and other information required for a meaningful mediation ~~conference session~~ session, or fails to keep confidential any mediation statements or documents, or otherwise fails to follow the provisions of this ~~Order~~ Rule, may be prohibited from filing further pleadings with the Clerk of the Supreme Court relevant to the pending appeal, or otherwise subject to sanctions to be imposed after hearing by the mediator-

justice. Such sanctions may include monetary fines, counsel fees, or orders that may deny or grant relief to appellant(s) or to appellees(s) as circumstances and justice may require.

A(9.) Effective Date. This amended provisional rule shall become effective August 1, 2004 and any rule inconsistent with this provisional rule shall be superseded hereby.

Entered as an Order of this Court this *26th* day of *July 2004*.

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Williams, C. J.

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Flanders, J.

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Goldberg, J.

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Flaherty, J.

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Suttell, J.

Supreme Court

In re Amendment to Provisional Rule A, :  
Mediation Session Procedures :  
(Sanctions) :

ORDER

Subdivision A(8) of Provisional Rule A (as amended), which provisional rule is situated in the Appendix to the Rules of Appellate Procedure and is captioned "Mediation Session Procedures," is hereby amended to read as follows:

"Provisional Rule A

Mediation Session Procedures

\* \* \*

"A(8.) Sanctions. A party or counsel for a party who fails to participate in a mediation session after notice, or fails to provide the necessary preliminary documents and other information required for a meaningful mediation session, or fails to keep confidential any mediation statements or documents, or fails to participate in the mediation session in good faith, or otherwise fails to follow the provisions of this Rule, may be prohibited from filing further pleadings with the Clerk of the Supreme Court relevant to the pending appeal, or otherwise be subject to sanctions to be imposed after hearing by the Court or the mediator-justice. Sanctions may be brought either on motion by a party, or by the mediator-justice or the Court. Such sanctions may include

monetary fines, costs, counsel fees, or orders that may deny or grant relief to appellant(s) or to appellees(s) as circumstances and justice may require.

Entered as an Order of this Court this 27th day of *October 2005*.

s/s

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WILLIAMS, C. J.

s/s

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GOLDBERG, J.

s/s

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FLAHERTY, J.

s/s

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SUTTELL, J.

s/s

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ROBINSON, J.

Supreme Court

In re Amendment to Provisional Rule A, :  
Mediation Session Procedures :  
(Transmission of the Record) :

**ORDER**

Subdivision A(5) of Provisional Rule A (as amended), which provisional rule is situated in the Appendix to the Rules of Appellate Procedure and is captioned "Mediation Session Procedures," is hereby amended to read as follows:

"Provisional Rule A

Mediation Session Procedures

\* \* \*

**"A(5). Ordering of Transcript, Transmission of the Record, and Filing of Briefs.** In order to expedite the mediation process and spare the parties as much initial expense as possible, the ordering of the transcript in respect to cases eligible for and referred to mediation, shall be extended to a date sixty (60) days from the filing of the notice of appeal, and the time for transmittal of the record of the trial court to the Supreme Court shall be extended to a date sixty (60) days from the date of the ordering of the transcript. This extension may be modified by special order issued by the mediator-justice or any other justice of the Supreme Court. After the mediation session, the mediator-justice may make such order as may be appropriate in respect to the ordering of the transcript and the filing of briefs or memoranda in the event that the case is not settled. The full



Survey Response

# **South Carolina**

## Court News

2011-09-22-01

# The Supreme Court of South Carolina

Re: Pilot Program for the Voluntary Mediation  
of Workers' Compensation Appeals

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ORDER

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Pursuant to the provisions of Article V, §4 of the South Carolina Constitution, the Court adopts the attached procedures and forms for the Pilot Program for the Voluntary Mediation of Workers' Compensation Appeals. This Pilot Mediation Program may be implemented by the Court of Appeals.

The program has the support of the Commission on Alternative Dispute Resolution. The Pilot Program shall be effective November 1, 2011, through November 1, 2014. The Commission on Alternative Dispute Resolution shall provide a report to the Supreme Court of South Carolina at the end of the pilot period which evaluates effectiveness of the Pilot Mediation Program and recommends further action.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/Costa M. Pleicones J.

s/Donald W. Beatty J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

September 22, 2011  
Columbia, South Carolina

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## PROCEDURES FOR THE PILOT PROGRAM FOR THE VOLUNTARY MEDIATION OF WORKERS' COMPENSATION APPEALS

1. Purpose. The purpose of the Pilot Program for the Voluntary Mediation of Workers' Compensation Appeals is to afford a meaningful opportunity to the parties in appeals from decisions of the Workers' Compensation Commission to achieve an efficient and just resolution of their disputes in a timely and cost-effective manner as early in the appellate process as

possible. Mediation takes place early in the appellate process in order to save the parties the time and expense of an appeal and to give the parties an opportunity to find creative solutions to the dispute.

2. Scope. All appeals to the Court of Appeals from final decisions of the Workers' Compensation Commission, whether directly from the Commission or from the circuit court, may be submitted to voluntary mediation pursuant to the Pilot Program.

3. Notice to the Court. When an appellant files the notice of appeal in a workers' compensation matter, the Clerk of the Court of Appeals shall notify the appellant(s) and respondent(s) that the case is eligible for mediation under the Pilot Program. Parties desiring to engage in voluntary mediation shall file a notice of consent to mediate requesting suspension of the appeal with the Clerk of the Court of Appeals prior to the expiration of either: (1) the time to order the transcript pursuant to Rule 207, SCACR; or (2) the time to file and serve the appellant's initial brief and designation of matter pursuant to Rules 208 and 209, SCACR. Where the parties do not file a joint notice of consent to mediate, the appeal shall proceed normally under the South Carolina Appellate Court Rules. Nothing in the Pilot Program prohibits parties in any appeal from engaging in voluntary mediation independent of the Pilot Program at any point in the appellate process.

4. Stay Pending Mediation. Upon the timely filing of a joint notice of consent to mediate, the time for ordering the transcript or serving and filing the initial briefs and designation of matter shall be suspended for up to sixty days to enable the parties to mediate the dispute. Within sixty days after the filing of a joint stipulation, the parties may file a joint request for an extension of up to an additional thirty days to complete the mediation process.

5. Selection of Mediator. The parties may choose a mediator or neutral who, in the opinion of all the parties, is qualified by training or experience to mediate all or some of the issues in the appeal. Mediators shall abide by the Standards of Conduct for Mediators in accordance with Appendix B of the South Carolina Court-Annexed Alternative Dispute Resolution Rules.

The parties and the neutral shall agree upon compensation. Unless otherwise agreed by the parties, fees and expenses of mediation shall be paid in equal shares per party.

6. Conduct of Mediation. All parties who elect to participate in the Pilot Program shall act in good faith in mediating the appeal. The parties and their representatives shall cooperate with the mediator, and communications during the mediation settlement conference shall be confidential in accordance with Rule 8, South Carolina Court-Annexed Alternative Dispute Resolution Rules.

7. Attendance. The following persons shall physically attend a mediation settlement conference unless otherwise agreed to by the mediator and all parties: (1) the mediator; (2) all individual parties; or an officer, director or employee having full authority to settle the claim for a corporate party; or in the case of a governmental agency, a representative of that agency with full authority to negotiate on behalf of the agency and recommend a settlement to the appropriate decision-making body of the agency; (3) the party's counsel of record; and (4) for any insured party against whom a claim is made, a representative of the insurance carrier who is not the carrier's outside counsel and who has full authority to settle the claim.

8. Full Resolution. If voluntary mediation is successful, the parties shall file a joint notice of settlement within five days of conclusion of mediation. Within thirty days of filing a joint notice of settlement, the parties shall file a notice of voluntary dismissal which complies with Rule 260, SCACR. Upon request, the Court of Appeals may remand the matter to the Workers'

Compensation Commission for approval of any settlement or any award of attorneys' fees in accordance with South Carolina Workers' Compensation Commission Regulations.

9. Partial Resolution. If voluntary mediation is only partially successful, the parties shall file a joint notice of partial settlement with the Clerk of the Court of Appeals within five days of conclusion of mediation. The parties shall identify which issues were settled and which issues remain in dispute. The Clerk of the Court of Appeals shall promptly reinstate the appeal and inform the parties in writing of the reinstatement of the appeal and of the starting date for compliance with further procedural requirements.

10. Failure to Resolve. If the parties notify the Clerk of Court that mediation was unsuccessful, or the parties fail to file a notice of full or partial settlement prior to the expiration of the time to mediate, the Clerk of the Court of Appeals shall promptly reinstate the appeal and inform the parties in writing of the reinstatement of the appeal and of the starting date for compliance with further procedural requirements.

11. Sanctions. A party or counsel for a party who agrees to participate in the Pilot Program, but fails to abide by its terms without good cause, may be subject to sanctions in accordance with Rule 10(b), of the South Carolina Court-Annexed Alternative Dispute Resolution Rules. A party seeking sanctions may file a motion pursuant to Rule 240, SCACR, in the Court of Appeals.

12. Forms. Forms have been prepared for the use of the parties who participate in the Pilot Program.

13. Application of the South Carolina Court-Annexed Alternative Dispute Resolution Rules. With the exception of Rules 3, 4, 5, 6, 7(e) and (f), 9(b) and (d), and 10(a) of the South Carolina Court-Annexed Alternative Dispute Resolution Rules, the South Carolina Court-Annexed Alternative Dispute Resolution Rules shall apply to any mediation in the Pilot Program to the extent the South Carolina Court-Annexed Alternative Dispute Resolution Rules do not conflict with any South Carolina Appellate Court Rules.

14. Effective Date. The Pilot Program shall be effective for all workers' compensation appeals filed on or after November 1, 2011, through November 1, 2014, unless extended by Order of the Supreme Court.

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#### **FORMS FOR THE PILOT PROGRAM FOR THE VOLUNTARY MEDIATION OF WORKERS' COMPENSATION APPEALS**

**WCP001 - Notice of Consent to Mediate**

**WCP002 - Request for Extension of Time**

**WCP003 - Notice of Partial Settlement**

**WCP004 - Notice of Settlement**

# Survey Response: Tennessee

**STATE APPELLATE MEDIATION PROGRAM SURVEY**

1. What year was your appellate mediation program established?  
Tennessee Supreme Ct. Rule 34 established voluntary appellate mediation in 2009.
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?  
Tennessee Supreme Ct. Rule 34
3. Are mediations ordered by the court or is mediation an optional service provided upon request?  
Mediations are voluntary
4. When did the program begin conducting mediations?  
Tennessee Supreme Ct. Rule 31 listed mediators – 1997, Tennessee Supreme Ct. Rule 34 - 2009
5. How many civil appeals are administered by your court annually?  
219 filed / 262 disposed
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.  
Per Tennessee Supreme Ct. Rule 34, parties “may jointly request a suspension of the processing of the appeal for the purposes of engaging in voluntary mediation.”
7. How many cases were mediated in the most recent year?  
10 appellate mediations
8. How many cases settled in mediation in the most recent year?  
Full settlements   4        Partial settlements   6
9. How does your program define a “partial settlement?”  
Any settlement other than a full settlement on all the issues.
10. Does your program offer mediation in cases with self-represented parties?    Yes  
If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?    No
11. Who serves as mediators in your program? How many of such mediators are currently active in your program?  
Tennessee Supreme Ct. Rule 31 Listed Mediators. There are 1047 active mediators in Tennessee as of 2/8/12.

12. What are the required qualifications for appellate mediators in your program?  
 Appellate mediators must meet the requirements of Tennessee Supreme Ct. Rule 31 and be approved by the Alternative Dispute Resolution Commission to become listed as Rule 31 listed mediators.
13. How are mediators selected or designated for a particular case?  
 Mediators are chose/selected by both parties.
14. Are your cases mediated by one mediator or are they co-mediated?  
 Either
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.  
 Mediators use a variety of approaches in Tennessee.
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.  
 N/A
17. What is the annual cost of the program?  
 N/A
18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?  
 2 / 0 serve as mediators
19. If parties are ordered to mediation in your program, are they permitted to “opt-out” of mediation? Please describe the grounds permitted to opt-out.  
 Appellate mediations per Tennessee Supreme Ct. Rule 34 are voluntary.
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons rising from the mediation process? If so, have such sanctions been imposed? Please describe.  
 Tennessee Supreme Ct. Rule 31 provides sanctions for Rule 31 mediators for mediator misconduct arising out of mediations.
21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)
- 1) medical malpractice \_\_\_\_\_ %
  - 2) other \_\_\_\_\_ %
  - 3) personal injury \_\_\_\_\_ %
  - 4) real property \_\_\_\_\_ %

5) workers compensation \_\_\_\_\_ %

6) \_\_\_\_\_ %

7) \_\_\_\_\_ %

22. If you are able to provide settlement statistics per case type, please do so.

23. What types of civil cases, if any, are ineligible for mediation in your program?

N/A

24. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.

No

25. What do you rate as the most significant successes of your appellate mediation program to date?

Unknown

26. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

N/A

27. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

No major effect

28. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

Tennessee Supreme Court Rule 31 / Tennessee Supreme Court Rule 34  
@ [www.tncourts.gov](http://www.tncourts.gov)

29. Has your program been evaluated? If so, could you share the results of the evaluation?

No

Mediation Program Name: Rule 34

Court: Appellate

Court Case Jurisdiction: Appellate

Court Geographic Jurisdiction: Tennessee

Name of Mediation Program Director/Administrator: Claudia Lewis

Address: Administrative Office of the Programs Manager  
511 Union St., Suite 600  
Nashville, TN 37219

Telephone: 615-741-2687

Email: Claudia.lewis@tncourts.gov

Website: www.tncourts.gov

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 2/8/12

Claudia M. Lewis  
Name

Claudia M. Lewis  
Signature

Program Manager  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**FILED**  
MAR 02 2011  
Clerk of the Courts

IN RE REPEAL OF RULE 37,  
RULES OF THE TENNESSEE SUPREME COURT

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No. M2010-02373-SC-RL2-RL - Filed: March 2, 2011

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**ORDER**

In June 2001, the Court adopted Rule 37 [Provisional], Rules of the Tennessee Supreme Court, establishing a mandatory mediation program for appeals in workers' compensation cases. As originally adopted by the Court, Rule 37 was to be effective from September 1, 2001 until August 31, 2004. In August 2004, the Court extended the term of the program by one year, ending on August 31, 2005. In August 2005, the Court adopted a revised Rule 37; the revised rule, in pertinent part, ended the provisional status of the rule and provided that the rule applied to all workers' compensation cases in which a notice of appeal was filed on or after September 1, 2001.

In 2004, the General Assembly amended Tenn. Code Ann. § 50-6-225(a) to provide that "in case of a dispute over or failure to agree upon compensation under the Workers' Compensation Law between the employer and employee or the dependent(s) of the employee, the parties shall first submit the dispute to the benefit review conference process provided by the division of workers' compensation." Thus, as a result of the amended statute, the parties were required to participate in mediation (i.e., a Benefit Review Conference) prior to the filing of a workers' compensation civil action. Rule 37, however, continued to require the parties to also engage in appellate mediation following the filing of a notice of appeal.

Section 12 of Rule 37 provides, in pertinent part: "the efficacy of the procedures outlined herein [in Rule 37] shall be subject to evaluation by the Court." Consistent with Section 12, the Court tentatively concluded that requiring a second mediation as a part of the appeal process was unduly burdensome on the litigants. On November 17, 2010, the Court filed an order stating that the Court was considering the repeal of Rule 37 in its entirety, thereby cancelling the mandatory appellate mediation program established by the rule; the order solicited written comments on the proposed repeal of Rule 37 and set January 18, 2011 as the deadline for submitting written comments.

After due consideration, the Court hereby repeals Rule 37 in its entirety, effective upon the filing of this order. For all pending appeals governed by Rule 37, but in which the mediation process was not completed as of the filing of this order, the mediation process may be terminated, and the mediator and the parties are relieved of their responsibility to make any post-mediation filing previously required by Tenn. Sup. Ct. R. 37, § 11. The repeal of Rule 37 does not relieve the parties of their liability for payment of the cost of services rendered by a mediator pursuant to the Rule; Rule 37, § 10 shall be deemed to continue to apply to all cases in which such payment has not been made as of the filing of this order.

The Clerk is directed to send a copy of this order to the parties in each pending appeal of a workers' compensation case. The Clerk also shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

Survey Response:  
Texas  
4<sup>th</sup> Court of Appeals

## STATE APPELLATE MEDIATION PROGRAM SURVEY

1. What year was your appellate mediation program established?  
Approximately 1995-1996
2. What formal method, if any, was used to establish the program (e.g., rule, administrative order, other)?  
Local Rule – please see attached
3. Are mediations ordered by the court or is mediation an optional service provided upon request?  
Mediations are ordered by the Court; however, if either party objects the Court does not order them to mediate.
4. When did the program begin conducting mediations?  
There is not a “mediation program” that conducts mediations. Instead, the Court orders the parties to mediation with an agreed upon mediator.
5. How many civil appeals are administered by your court annually?  
There are approximately 550 cases per year.
6. How are appellate cases selected for mediation? Please include a brief description of the criteria or indices used in such selection process.  
The parties in a civil case must be willing to mediate.
7. How many cases were mediated in the most recent year?  
16
8. How many cases settled in mediation in the most recent year?  
  
Full settlements   6        Partial settlements   n/a
9. How does your program define a “partial settlement?”  
n/a
10. Does your program offer mediation in cases with self-represented parties? If so, approximately what percentage of the cases mediated in the most recent year involved at least one self-represented party? Does your program employ different policies or screening in cases involving self-represented parties?  
  
The Court does not order pro se litigants to mediation.
11. Who serves as mediators in your program? How many of such mediators are currently active in your program?  
Any licensed attorney the parties agree upon may serve as a mediator.

12. What are the required qualifications for appellate mediators in your program?  
The court does not have requirements for the mediator, but they are usually licensed attorneys.
13. How are mediators selected or designated for a particular case?  
Agreed upon by the parties.
14. Are your cases mediated by one mediator or are they co-mediated?  
I have not seen any case co-mediated.
15. Please describe generally the mediation approaches used by your mediators, e.g., facilitative, directive/analytical, mediation combined with neutral case evaluation, and other approaches or services.  
Unknown – the mediations are private and not conducted by the court.
16. Please describe the roles and relationships of judge and non-judge leadership in the direction and management of your appellate mediation program.  
One justice at the Court screens the cases, reviews the ADR Addendums (see a copy attached) and decides if the case should be sent to mediation.
17. What is the annual cost of the program?  
-0-
18. How many staff persons assist in the management and administration of your appellate mediation program? How many of such persons, if any, also serve as mediators in your program?  
No one from the Court serves as a mediator. One justice and one staff member assist with the ADR program.
19. If parties are ordered to mediation in your program, are they permitted to “opt-out” of mediation? Please describe the grounds permitted to opt-out.  
The parties are permitted to “opt-out” for any reason. They do not have to give a reason.
20. Is your program authorized to impose sanctions for failure to participate in mediation or for other reasons arising from the mediation process? If so, have such sanctions been imposed? Please describe.  
No sanctions are authorized.

21. What are the major case types you currently mediate, with approximate percentages (most recent year)? (e.g. contract, domestic, tort)

1) \_\_\_\_\_ %

2) \_\_\_\_\_ %

3) \_\_\_\_\_ %

4) \_\_\_\_\_ %

5) \_\_\_\_\_ %

6) \_\_\_\_\_ %

7) \_\_\_\_\_ %

We have not kept this information in the past; however this is a good idea so we may change.

22. If you are able to provide settlement statistics per case type, please do so.  
Unknown

23. What types of civil cases, if any, are ineligible for mediation in your program?  
Juvenile cases and governmental immunity cases are not sent to mediation.

24. Has your appellate mediation program been significantly modified in program or service design or operational policies since its creation? If so, please describe.  
No

25. What do you rate as the most significant successes of your appellate mediation program to date?

26. What are the major challenges or issues your program continues to face that you would like to discuss with other appellate mediation programs around the country?

27. How has the program affected the workload of your court? Has your court been able to dispose of more cases annually? What effect, if any, has your program had on the need for additional judicial resources?

I do not believe the program has significantly reduced the workload of the Court; however, the Court is committed to ADR.

28. Please attach copies of relevant rules, orders, guidelines, operational forms, brochures, articles and other materials that may help describe your appellate mediation program.

See Local Rule, Internal Operating Procedures and Alternative Dispute Addendum.

29. Has your program been evaluated? If so, could you share the results of the evaluation?

No

Mediation Program Name:

Court: Fourth Court of Appeals, State of Texas

Court Case Jurisdiction: Civil and criminal appeals – Intermediate Court of Appeals

Court Geographic Jurisdiction: Appeals from 32 counties in State of Texas

Name of Mediation Program Director/Administrator: There is no Director or Administrator. Currently, Justice Sandee Marion handles the ADR docket.

Address: 300 Dolorosa, Suite 3200, San Antonio, TX 78205

Telephone: (210) 335-2635

Email: [sandee.marion@txcourts.gov](mailto:sandee.marion@txcourts.gov)

Website: [www.4thcoa.courts.state.tx.us](http://www.4thcoa.courts.state.tx.us)

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: 1/30/12

Sandee Bryan Marion  
Name

/s/  
Signature

Justice, Fourth Court of Appeals  
Title

Please return your completed survey and other materials by January 31, 2012 to Mala Malhotra-Ortiz, Office of Mediation, Maryland Court of Special Appeals, Courts of Appeal Building, 361 Rowe Blvd, Annapolis, MD 21401. Email, [Mala.Ortiz@mdcourts.gov](mailto:Mala.Ortiz@mdcourts.gov), phone 410-260-3715, fax 410-260-1547.

**ALTERNATIVE DISPUTE RESOLUTION ADDENDUM TO CIVIL DOCKETING STATEMENT  
FOURTH COURT OF APPEALS**

ADDENDUM FILING DUE DATE: \_\_\_\_\_

COURT OF APPEALS NO. \_\_\_\_\_

Trial Court Case No. \_\_\_\_\_

Trial Court Style: \_\_\_\_\_

1. Was this case mediated at the trial court level?     Yes     No

2. If yes, who was the mediator? \_\_\_\_\_

3. State briefly the type of case and issues on appeal (e.g., breach of contract, divorce, oil and gas):

\_\_\_\_\_  
\_\_\_\_\_

4. Do you believe mediation would be a beneficial tool in the resolution of this appeal?

Yes     No     Willing to mediate if ordered by the Court.

5. If your answer to #4 above is no, please explain: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

6. If this appeal is ordered to mediation, do you have a preferred mediator? If so, state mediator's name, address, and telephone number: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

Type name and TBN: \_\_\_\_\_

Attorney of Record for: \_\_\_\_\_

See p. ~~4~~<sup>4</sup> - p. ~~3~~<sup>6</sup> for ADR information

**FOURTH COURT OF APPEALS**  
**INTERNAL OPERATING PROCEDURES**  
**FOR THE HANDLING OF CASES**

**1. Applicability**

These Internal Operating Procedures for the Handling of Cases apply to all civil and criminal proceedings filed in the Fourth Court of Appeals except appeals arising under the Parental Notification Act, which are governed by that Act and sections 2, 4, and 15 of these rules only.

**2. Seniority**

The chief justice is the senior justice. The seniority of a justice is determined by the date the justice joined the court. If two or more justices join the court on the same date, their seniority relative to one another will be determined by lot.

**3. "By Lot"**

Whenever these rules provide that assignment shall be "by lot," the responsibility for making the assignment by lot is entrusted to the clerk of the court. In making an assignment by lot, the clerk of the court may decide the procedure to be employed.

**4. "Justice" and "Participating Justices"**

When "justice" and "justices" is used in these rules (other than in section 2), it refers both to the court's chief justice and justices.

A "participating justice" is a justice (including any visiting justice assigned to the case) who is not recused or disqualified from considering whether to grant en banc consideration or reconsideration or participating in en banc review in a particular case.

**5. Court Records**

**Public Records**

Unless made confidential by law, the court's opinions, judgments, and orders are public records. The original briefs and other papers filed in a case, clerks' records, and reporters' records are public records unless sealed by order of the trial court in accordance with Rule 76a, TEX. R. CIV. P., by another court in accordance with other law, or by other law.

Not Public Records

- b. The assignment sheets maintained by the clerk of the court, drafts of opinions and judgments, route slips, motion cover sheets, memoranda, vote sheets, and individuals' notes are confidential and must not be placed in the public record.

Sealed Records

- c. If a record is sealed, the clerk of the court must:
  - i. ensure the record remains sealed to all unauthorized persons; and
  - ii. issue a letter warning the litigants and their attorneys that the record is sealed in this court.

**6. Failure to Pay Filing Fee**

Action on Documents with Fee Pending

- a. If a document is tendered for filing without the appropriate filing fee, it must be conditionally filed, a letter sent to the filer noting the deficiency and affording the filer ten days in which to correct it, and entered into Case Management with the notation "pending fee." Absent extraordinary circumstances, a document tendered for filing without the appropriate filing fee will not be further processed unless the filing fee is paid within the period designated in the letter sent pursuant to this section. If the filer pays the appropriate filing fee within the time period designated in the letter sent pursuant to this section, the notation "pending fee" must be removed from Case Management and the document processed in the usual manner.

Action on Documents if Fee not Pending

- b. If the filer fails to pay the appropriate filing fee within the time period designated in the letter sent pursuant to section 6.a, the document must be forwarded for appropriate action to:
  - i. the monitoring justice if the case has not yet been assigned to a submission panel in accordance with section 7 below; or
  - ii. the authoring justice if the case has been assigned to a submission panel in accordance with section 8 below.

## 7. Monitoring of Appeals; Jurisdiction Checks; Alternative Dispute Resolution

### Assignment of Monitoring Justice

- a. When an ordinary or accelerated appeal is filed, it must be assigned to a justice in rotation in order of seniority to monitor.

### Definitions used during Monitoring

- b. The justice to whom an appeal is assigned for monitoring purposes is the “monitoring justice”; the monitoring justice’s staff attorney is the “monitoring attorney”; the “monitoring panel” is the monitoring justice and the next two justices in order of seniority; and the “monitoring period” is the period of time beginning with the date the appeal is filed and ending on the date that a submission panel is assigned to the appeal in accordance with section 8 below.

### c. Jurisdiction Checks

- i. As soon as practicable after the monitoring attorney’s receipt of the clerk’s record, the monitoring attorney must complete a jurisdiction check.

- ii. When conducting a jurisdiction check, the monitoring attorney must determine whether the record was sealed by the trial court and notify the clerk of the court accordingly, so the letter required by section 5.c.ii may be sent.

- iii. If the monitoring attorney determines that the court does not have jurisdiction over the appeal, so that it must be dismissed, the monitoring attorney must prepare an appropriate opinion, order, or judgment.

- (1) In a criminal case, if a notice of appeal is filed more than one year after it was due, the appeal may be dismissed without first issuing a show cause order; if the notice of appeal was filed less than one year after it was due, the appeal may not be dismissed without first issuing a show cause order and affording the appellant an opportunity to respond.

- (2) In a civil case, if a notice of appeal is filed no more than fifteen days after the date it was due, the monitoring panel must issue a show cause order and afford the appellant an opportunity to provide a reasonable explanation for the late filing.

### d. Certification in Criminal Appeals

If the trial court’s certification states and the record reflects that the appellant does not have the right to appeal, the monitoring justice must issue a show cause order and afford the appellant an opportunity to

respond before dismissing the appeal. Conversely, if the trial court's certification states that the appellant does not have the right to appeal but the record reflects that the appellant does have the right to appeal, the monitoring justice must issue an order affording the trial court an opportunity to amend its certification.

e. Failure to File Clerk's Record

- i. If a clerk's record is not filed because the appellant failed to pay or make arrangements to pay the clerk's fee for preparing the record, the monitoring attorney must determine whether the record reflects that the appellant is indigent.
- ii. If the record establishes that the appellant is indigent, the monitoring justice must issue an order stating that appellant is indigent and ordering the clerk to file the clerk's record.
- iii. If the record establishes that the appellant is not indigent or fails to establish indigency, the monitoring justice must issue an order affording appellant at least ten days to show that the clerk's fee has been paid or that appellant is entitled to proceed without payment of costs. If appellant fails to file a satisfactory response within the time ordered, the monitoring panel may dismiss the appeal for want or prosecution.

f. Alternative Dispute Resolution

i. General Provisions

- (1) Local Rule 2 provides that "[o]n a party's motion, or on the court's own initiative after reviewing the docketing statement, the Court may refer a case to alternative dispute resolution."
- (2) ADR is considered an available option in all civil appeals over which the trial court has jurisdiction except those involving juveniles.
- (3) The ADR deputy clerk must place all ADR filings in a blue file folder (the ADR file) and segregate the ADR file from the case file.

ii. When a party to a civil appeal in which ADR is available files its civil docketing statement, it must also file an ADR Addendum.

- (1) If a party fails to file an ADR Addendum with its civil docketing statement, the ADR deputy clerk must provide the party with an ADR Addendum.

- (2) If the party still fails to file its ADR Addendum, the ADR deputy clerk must send the party a reminder notice.
- iii. Upon receipt of ADR addenda from all parties to an appeal, the ADR deputy clerk must review the addenda to determine the parties' positions regarding ADR and communicate the parties' positions to the ADR justice.
- (1) If all parties to an appeal agree to ADR, the ADR justice must refer the appeal to ADR.
  - (2) If all parties to an appeal oppose ADR, the ADR justice must not refer the appeal to ADR.
  - (3) If one or more parties agrees to ADR and one or more parties opposes ADR, the ADR justice must decide whether to refer the appeal to ADR on a case-by-case basis in light of the parties' reasons for agreeing to and opposing ADR.
- iv. If an appeal is to be referred to ADR, the ADR justice must issue an order so indicating and giving the parties fifteen days to either object to ADR or propose a mutually agreeable mediator.
- (1) If any party objects to ADR, the ADR justice may not refer the appeal to ADR.
  - (2) If no party objects to ADR and the parties agree on a mediator, the ADR justice must issue an order referring the appeal to ADR, appointing the mediator agreed to by the parties, and suspending the appellate deadlines for an appropriate period of time, generally forty-five days.
  - (3) If no party objects to ADR and the parties do not agree on a mediator, the ADR justice must select a mediator and issue the order referred to in the preceding section.
  - (4) The ADR deputy clerk must mail copies of the referral and suspension order to the parties and the mediator and file them in the ADR file. The ADR deputy clerk must also note the fact and length of the suspension in Case Management and notify the monitoring attorneys accordingly.
  - (5) If the parties need additional time for ADR beyond the initial suspension period, the ADR justice may issue an order extending the suspension. If the suspension is extended, the ADR deputy clerk must update Case Management accordingly.

- (6) When ADR is concluded, the mediator must report the outcome of ADR to the court. Upon receipt of the mediator's report, the ADR deputy clerk must mail a letter thanking the mediator and forward the mediator's report to the monitoring attorney for appropriate action.

g. Motions

- i. All motions filed during the monitoring period (except motions for extensions of time in which to file briefs, which the clerk is authorized to rule on by the administrative order attached as Appendix 1) must be delivered immediately after filing to the monitoring justice or the monitoring attorney.
- ii. All motions filed during the monitoring period, except the motions specified in section 7.g.iii below, must be either promptly ruled upon by the monitoring justice in accordance with Rule 10.3a, TEX. R. APP. P., or, if necessary, carried with the case.
- iii. A motion must be submitted to the monitoring panel if:
  - (1) The ruling on the motion will dispose of the appeal;
  - (2) The monitoring justice votes to deny the motion;
  - (3) The motion will be disposed of with a written opinion; or
  - (4) The monitoring justice votes to grant a motion to extend the time in which to file a brief in excess of ninety days from the date the brief was originally due.
  - (5) However, if a motion requiring immediate action must be submitted to the monitoring panel and one of the justices on the monitoring panel is unavailable, the motion must be submitted to the next justice in order of seniority until the required number of signatures has been obtained.
  - (6) If the ruling on a motion that must be submitted to the monitoring panel will not dispose of the appeal, it may be ruled upon by only two justices in exceptional circumstances.
- iv. Motions that may be ruled upon by a single justice pursuant to section 7.g.ii above must be disposed of by a written order. Motions that require a ruling by a panel pursuant to section 7.g.iii above must be disposed of by a written order or an opinion, as a majority of the panel must deem appropriate.

h. Briefs

- i. When a party's brief is filed or an amicus brief is received, the fact of its filing or receipt must be entered into Case Management and the brief delivered to the monitoring attorney as soon as practicable after filing.
- ii. After receiving a brief, the monitoring attorney must review it to ensure that it complies with Rule 38, TEX. R. APP. P.
- iii. If a brief "flagrantly" violates Rule 38, TEX. R. APP. P., a written order requiring it to be amended, supplemented, redrawn, or stricken in accordance with Rule 38.9(a), TEX. R. APP. P., may be issued by the monitoring panel.

i. Initial Recommendation Regarding Oral Argument

- i. An appeal may be submitted without oral argument "if argument would not significantly aid the court in determining the legal and factual issues presented in the appeal." TEX. R. APP. P. 39.8.

ii. Ordinary Appeals

- (1) When the response brief in an ordinary appeal has been filed or the time for filing a response brief has expired, the monitoring attorney must review the briefs to determine whether oral argument has been properly requested by any party and, if so, whether to recommend that the appeal is submitted with oral argument or on briefs in accordance with the criteria set forth above in section 7.i.i.
- (2) After the review described in the preceding section, the monitoring attorney must forward the briefs and recommendation to the clerk of the court, who must calendar the case for submission in accordance with the monitoring attorney's recommendation at the earliest practicable date in accordance with the procedures set forth in section 9.

iii. Accelerated Appeals

- (1) When the response brief in an accelerated appeal has been filed or the time for filing a response brief has expired, the authoring justice must circulate to the panel (assigned in accordance with section 8 below) in order of seniority the briefs, a memorandum regarding whether the appeal should be submitted with oral argument or on briefs in accordance with the criteria set forth in section 7.i.i above, and a vote sheet (which may be included in the memorandum).

- (2) Upon receipt of the materials identified in the preceding section, each justice must vote whether to submit the appeal with oral argument or on briefs.
  - (3) After the panel has voted on whether to submit the appeal with oral argument or on briefs, the authoring justice's staff attorney must forward the packet to the clerk of the court, who must calendar the case for submission in accordance with the panel's vote at the earliest practicable date in accordance with the procedures set forth in section 9.
- iv. If a party fails to request oral argument on the cover of its brief but later files a motion requesting oral argument, the motion must be held in abeyance until the appeal has been assigned to a panel. When the case is assigned to a panel, the panel must rule on the motion as soon as practicable and communicate its ruling to the clerk of the court, who must set the case for submission in accordance with the panel's vote at the earliest practicable date.

## 8. Submission Panels

### a. Ordinary Appeals

Submission panels are assigned at the beginning of each calendar year using a court-approved time series matrix.

### b. Panels for Oral Argument Outside Bexar County

A panel for oral argument outside Bexar County must be constituted in the same manner as set forth above in section 8.a.i.

### c. Visiting Justice Panels

- i. With the approval of a majority of the court, the chief justice may ask the chief justice of the Supreme Court to appoint a visiting justice to assist in the handling of the court's docket.
- ii. If a visiting justice is assigned, the unassigned justice and another justice selected by lot shall sit on a panel with the visiting justice.
- iii. The clerk must attempt to equalize the number of visiting justice panels to which justices are assigned.

### d. Periods of Service

- i. Panels for Bexar County serve for two-month periods, which are: September-October, November-December, January-February, March-

April, and May-June. In addition, the court may, by majority vote, decide to submit cases in July and August, although any justice may opt out of July and August submission panels. Panels for July and August shall be constituted from those justices who have not opted out as set forth above in section 8.a.i.

ii. Panels for oral argument outside Bexar County serve only the day or days designated for oral argument in that county.

e. Original Proceedings and Accelerated Appeals

Except as otherwise provided in Section 9.c, upon receipt of a petition in an original proceeding and when a response brief in an accelerated appeal has been filed or the time for filing a response brief has expired, the case must be assigned to a panel, with the authoring judge being the next justice in rotation in order of seniority and the remaining panel members selected by the clerk of the court in accordance with the appropriate assignment sheet. The clerk of the court shall be responsible for maintaining the rotation list and the assignment sheets. However, if emergency relief is requested and the judge who should be assigned to author the opinion is not available, the next justice in the rotation list will serve as the authoring justice; in that event, authorship in the next original proceeding or accelerated appeal must be assigned to the justice who was unavailable.

f. Submission without Briefs

If a monitoring panel orders submission without briefs of an accelerated appeal of a trial court's order terminating the parent-child relationship pursuant to section 263.405(g) of the Texas Family Code, the monitoring panel shall be the panel on the merits; and the monitoring justice shall be the authoring justice.

g. Acceleration of Appeal

If a monitoring panel orders that an ordinary appeal be accelerated, either on motion or on the court's own initiative, the monitoring panel shall be the panel that decides the merits of the appeal; and the authoring justice must be determined by lot.

h. Presiding Officer

The senior justice on a panel presides over the panel.

i. Substitution of Panel Members

Except as provided in section 8.g, upon the reasonable request, disqualification, or absence of a panel member, the unassigned justice for the month in which a case is to be submitted shall sit for the absent panel member. If the unassigned justice cannot sit, another justice selected by lot shall sit in place of the absent panel member. If the absent panel member was assigned to author the opinion, the sitting justice will be responsible for writing that opinion unless the panel by majority vote agrees otherwise. All changes in the composition of panels and authorship of opinions must be immediately reported to the clerk of the court and entered into Case Management.

j. Newly-Appointed or Elected Justice

- i. On cases set for submission on briefs and those already submitted on briefs, a newly-appointed or elected justice replaces the justice whose place the newly-appointed or elected justice has assumed.
- ii. On cases set for submission with oral argument, a newly-appointed or elected justice replaces the justice whose place the newly-appointed or elected justice has assumed only if (a) oral argument has not yet been heard or (b) oral argument has been heard but the other two justices assigned to the case cannot agree on a judgment.

k. Equalization of Panel Service

The clerk of the court must attempt to equalize the number of ordinary appeal, accelerated appeal, and original proceeding panels to which the justices are assigned.

**9. Assignment of Cases to Panels**

a. Ordinary Appeals

- i. Not later than forty-five days before the date set for submission, the clerk of the court must prepare a draft of the submission docket in the following manner:
  - (1) The clerk must cause to be generated two “at issue” lists for ordinary appeals, one list for criminal cases and one list for civil cases, with each list arranged in ascending chronological order beginning with the oldest “at issue” case, except that precedential appeals must be placed at the top of each list. “At issue” means an appellee’s brief has been filed or the time for filing the appellee’s brief has expired; and the monitoring attorney has instructed the clerk’s office that the case is “at issue” and to set the case.

- (2) The clerk must assign the first case on the criminal “at issue” list to Panel A, the second case on the criminal “at issue” list to Panel B, the third case on the criminal list to Panel A, the fourth case on the criminal list to Panel B, and so forth until all the criminal cases on the “at issue” list are assigned or the docket is full. Then the clerk must assign the first case on the civil “at issue” list to Panel A, the second case on the civil “at issue” list to Panel B, the third case on the civil list to Panel A, and so forth until all the civil cases on the “at issue” list are assigned or the docket is full.

b. Accelerated Appeals and Original Proceedings

Accelerated appeals and original proceedings shall be assigned to panels in accordance with section 8.e above.

c. Related Matters

In an effort to promote greater efficiency and judicial economy, any panel assigned to a matter, *i.e.*, an ordinary appeal, accelerated appeal, or original proceeding, shall have the discretion to determine that another matter pending in the court is sufficiently related to the assigned matter such that the same panel should be assigned to the related matter. When a panel determines that two matters are sufficiently related, the senior justice of the panel shall instruct the clerk to assign the same panel to the related matter, and the same justice shall author both matters. If a different panel has been assigned to the related matter before the matters are determined to be related, the clerk of the court shall remove the panel assigned to the related matter. If the related matter is an original proceedings or an accelerated appeal, and the justice assigned to author the related matters is not the justice who was originally assigned to the authoring judge pursuant to section 8.e, authorship of the next original proceeding or accelerated appeal ready for submission must be assigned to the authoring judge who was removed as the authoring judge of the related matter.

**10. Assignment of Cases to Authoring Justices, Final Decision on Oral Argument, and Notice of Submission**

a. General Provisions

- i. Assignment of authorship to a particular justice must be kept confidential until the court’s opinion is issued.
- ii. The clerk of the court must make an effort to ensure that each justice is assigned to author an equal number of opinions in ordinary appeals, accelerated appeals, and original proceedings.

- b. Final Decision on Oral Argument
  - i. Ordinary Appeals. Except as otherwise provided in section 9.c above, after preparation of the draft submission docket, but before submission, authorship of opinions shall be assigned to a particular justice randomly by lot.
    - (1) Within ten days after authorship has been assigned in ordinary appeals on the draft submission docket, each panel must meet to review the briefs and determine whether to accept the monitoring attorney's recommendation regarding oral argument.
      - (a) If the panel agrees with the monitoring attorney's recommendation, no action is required.
      - (b) If the panel disagrees with the monitoring attorney's recommendation, the presiding justice must inform the deputy clerk responsible for preparing the docket of all changes to the draft submission docket.
      - (c) After both panels have reported any changes, the clerk of the court must notify the parties of the date of submission, the members of the panel, and whether the case will be submitted with oral argument or on briefs.
  - ii. Accelerated Appeals and Original Proceedings. Except as otherwise provided in section 9.c above, authorship of opinions in accelerated appeals and original proceedings shall be assigned in accordance with section 8.e above.

## **11. Pre- and Post- Submission Conferences**

### Pre-Submission Conference

- a. Each panel shall hold a pre-submission conference for cases submitted with oral argument. The presiding justice for the panel is responsible for identifying an appropriate meeting date; however, the pre-submission conference must be held no later than the afternoon before the day on which oral argument is to be heard.

### Post-Submission Conference

- b. If a case is orally argued, it must be discussed at a post-submission conference held as soon as practicable after oral argument.

## 12. Preparation, Circulation, and Issuance of Opinions

### Preparation and Circulation of Opinion

- a. Unless the panel members agree otherwise, the justice assigned to author an opinion must prepare and circulate a draft majority opinion along with a route slip to the second member of the panel in order of seniority.
  - i. In ordinary appeals, the authoring justice should place a draft majority opinion into circulation within three months of the submission date. If the authoring justice fails to do so, the other two panel members may call for a conference and, by a majority vote of the panel, transfer authorship to either of the other two panel members.
  - ii. In accelerated appeals and original proceedings, the authoring justice should place a draft majority opinion into circulation as soon as practicable after the submission date.

### Publication on Designation

- b. Although a publication designation is required in opinions in criminal appeals, opinions in civil appeals must not contain a publication designation.

### Ten-Day Review Period

- c. Within ten days of receipt of a draft majority opinion (“the ten-day review period”), the second member of the panel must note on the route slip attached to the draft opinion the date and his or her vote, *i.e.*, whether he or she joins in the proposed opinion or concurs in or dissents to all or part of the proposed judgment, and forward the draft majority opinion and route slip to the third member of the panel. Likewise, within ten days of receipt of the draft majority opinion, the third panel member must note the date and his or her vote on the route slip and forward the draft majority opinion back to the authoring justice.
  - i. Within the 10-day review period, a panel member may prepare a concurring or dissenting opinion and circulate it with an attached route slip to the authoring justice. After the authoring justice has initialed and dated the route slip attached to the concurring or dissenting opinion, he or she must circulate the proposed majority opinion with the attached route slip and the concurring or dissenting opinion and attached route slip to the third justice on the panel.
  - ii. If the justice to whom the authoring justice routes a draft majority opinion does not vote on the route slip attached to a draft majority opinion and forward it to the third member of the panel within the 10-day review period, the authoring justice may circulate the draft majority opinion to the third justice on the panel.

- iii. If neither of the panel members concurs in the judgment proposed by the authoring justice or if a panel member desires major revisions to a draft majority opinion, the panel members must promptly notify the authoring justice, who must call a panel conference. At this conference, the panel members must attempt to resolve their differences. If the attempt fails, a vote must be taken. If the authoring justice is in the minority, the remaining panel members must decide which of them will author the majority opinion.

#### Issuance after Thirty Days

- d. If a dissenting, concurring, or undecided justice holds a proposed majority opinion for more than thirty days from the date that justice receives the opinion for review, the authoring justice may call a conference to discuss issuance of the opinion without the dissenting, concurring, or undecided justice. After the conference and in accordance with sections 12.d and 12.f below, the authoring and joining or concurring justice may issue the opinion with an appropriate notation, such as “Dissent to Follow.”

#### Seventy-Two Hour Review Period

- e. After the panel members have finalized their opinion(s), the assigned legal secretary must e-mail the panel members’ opinion(s) to the other justices and write the date and time of the e-mail on the route slip attached to the majority opinion. If all justices indicate in writing that they do not object to immediate issuance of the opinion(s), the opinion(s) may issue in accordance with section 12.f below; otherwise, no opinion may issue until the expiration of seventy-two hours after the date and time of the e-mail (excluding Saturdays, Sundays, and holidays). At any time within 72-hour period, any justice may forward his or her suggestions, concerns, or questions to the panel members. Receipt of a suggestion, concern, or question does not obligate the panel members to modify their opinion(s).

#### Issuance of Opinions

- f. Opinions must be issued and posted on the court’s website on Wednesdays and such other days as a panel (or the justices participating in en banc consideration or reconsideration) by majority vote may direct. To issue on Wednesday, an opinion must be returned to the assigned legal secretary by 5:00 p.m. on the last working day of the week preceding the intended issue date.

### 13. Motions for Rehearing

#### Time for Rehearing

- a. A motion for rehearing not accompanied by a motion for reconsideration en banc must be considered and decided promptly by the panel assigned to the case. A motion for rehearing accompanied by a motion for reconsideration en banc is governed by section 14.b below.

#### Requesting Response

- b. If a majority of the panel believes a motion for rehearing may be meritorious, it must request a response before granting the motion in compliance with Rule 49.2, TEX. R. APP. P.

#### Order after Response

- c. When a response is requested to a motion for rehearing and when the motion for rehearing is ruled upon, the assigned attorney must prepare and circulate an appropriate order; and the clerk must mail a copy of the order to the parties in compliance with Rule 12.6, TEX. R. APP. P.

### 14. En Banc Consideration or Reconsideration

- a. General Provisions

Motion for En Banc Consideration should be given priority over other matters in circulation.

- b. Preliminary Review

#### On Motion

- i. If a motion for rehearing is accompanied by a separate motion for reconsideration en banc, the motion for rehearing and a motion cover sheet, the motion for reconsideration en banc and an En Banc Preliminary Review cover sheet, a copy of the panel's original opinion (if not included as an appendix to one of the motions), and a copy of the panel's proposed revised opinion, if any, must be circulated first to the panel's authoring justice and the original panel members in order of seniority and then to the remainder of the participating justices in order of seniority.

- (1) Each panel member must indicate on the motion cover sheet whether he or she votes to grant the motion for rehearing.

- (2) Each participating justice must indicate on the En Banc Preliminary Review cover sheet whether he or she votes to grant,

deny, or request a response to the motion for reconsideration en banc.

- ii. If a motion for reconsideration en banc is not accompanied by a motion for rehearing, the motion for reconsideration en banc and an En Banc Preliminary Review cover sheet, and a copy of the panel's opinion (if not included as an appendix to one of the motions) must be circulated first to the panel's authoring justice and the original panel members in order of seniority and then to the remainder of the participating justices in order of seniority. Each participating justice must indicate on the En Banc Preliminary Review cover sheet whether he or she votes to grant, deny, or request a response to the motion for reconsideration en banc.
- iii. If a participating justice votes to grant a motion for reconsideration en banc, he or she must prepare and circulate a memorandum indicating the basis for his or her vote; the memorandum may simply refer to the issue upon which reconsideration en banc should be granted and the appropriate pages in the motion for reconsideration en banc.
- iv. If a majority of the participating justices vote to request a response to a motion for reconsideration en banc, the motion for reconsideration en banc and response must be re-circulated for another vote after the response is filed.
- v. After each participating justice has voted to either grant or deny a motion for en banc consideration or reconsideration, the authoring justice of the panel opinion must prepare and circulate an order reflecting the court's vote; and the clerk of the court must mail a copy of the order to the parties or to their attorneys in compliance with Rule 12.6, TEX. R. APP. P.

#### On the Court's Own Initiative

- i. Any justice may request en banc consideration or reconsideration in any case at any time within the court's plenary power by requesting a meeting to discuss whether the court should consider or reconsider the case en banc or by preparing and circulating a memorandum explaining the reason or reasons that en banc consideration is desirable.
- ii. Regardless of the means by which consideration or reconsideration en banc is requested, the justices' votes must be recorded on an En Banc Preliminary Review cover sheet.
- iii. If on the court's own initiative a majority of the participating justices grant en banc consideration or reconsideration, the authoring justice of the panel opinion must prepare and circulate an order reflecting the court's vote; and the clerk of the court must mail a copy of the order to the parties or their attorneys in compliance with Rule 12.6, TEX. R. APP. P. If a majority of

the participating justices vote to deny en banc consideration or reconsideration on the court's own initiative, no order is required.

c. En Banc Opinion

- i. After all participating justices have voted, the authoring justice of the panel opinion must notify all participating justices of the outcome of the vote. If a motion for reconsideration has been denied, participating justices have 72 hours to notify the authoring justice if they intend to file a written dissent to the denial.
- ii. If a motion for reconsideration en banc is granted, the authoring justice on the panel must call a meeting of all justices within ten days.
- iii. Each participating justice must determine whether he or she approves or disapproves the panel's majority opinion.
- iv. If a majority of the participating justices disapprove of the panel's majority opinion, they must decide among themselves which of them will author an en banc opinion.
- v. The justice selected to author the en banc opinion must cause to be prepared and circulated to the participating justices an en banc opinion and route slip.
- vi. Any participating justice may concur in or dissent to an en banc opinion or judgment, with or without an opinion.
- vii. To ensure an adequate time for filing recusal motions, no en banc opinion may issue until twenty-one days after the date of the order granting consideration or reconsideration en banc.

d. Concurring or Dissenting Opinion

Any participating justice may concur in or dissent to the grant or denial of a motion for reconsideration en banc or the grant or denial of a justice's request for consideration or reconsideration en banc on the court's own initiative, with or without an opinion. If a participating justice authors a concurring or dissenting opinion, the order granting or denying consideration or reconsideration en banc and the concurring or dissenting opinion should issue simultaneously. Upon request, a participating justice's concurrence or dissent shall be noted on the order granting consideration or reconsideration en banc.

## 15. Parental Notification Act Appeals

### Assignment of Docket Number

- a. Immediately upon receipt of a notice of appeal, the appeal must be assigned a docket number and re-styled In re Jane Doe # \_\_, as in In re Jane Doe #10.

### Assignment of Panel and Authorship

- b. After the appeal has been assigned a docket number and re-styled, the clerk of the court must immediately assign a panel to the appeal, with an authoring justice assigned in rotation in order of seniority and the remaining two members of the panel assigned in accordance with the clerk's "In re Jane Doe Assignment Sheet."

### Notification to Deputy Clerk

- c. After the panel and authorship have been assigned, the clerk of the court must immediately notify the deputy clerk assigned to the appeal of the identity of the authoring justice and the remaining two panel members.

### Preparation of Opinion and Judgment

- d. Upon receipt of the identity of the authoring justice and the remaining two panel members, the deputy clerk assigned to the appeal must immediately deliver the appeal file to the authoring justice's staff attorney, who must, as soon as practicable, perform the review and research dictated by the circumstances; distribute copies of the filed documents and any memoranda to the panel members; and, on the forms adopted by the court, prepare and cause to be issued an opinion and judgment reflecting the panel's vote.

### Deadline for Issuance of Opinion

- e. Unless an extension is granted in accordance with section 33.04(b), TEX. FAM. CODE ANN., the court's opinion and judgment must issue "not later than 5 p.m. on the second business day after the date the notice of appeal is filed with the court that denied the application." TEX. FAM. CODE ANN. § 33.04(b).

### Confidentiality of Ruling

- f. "A ruling of the court of appeals issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The ruling may not be released to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, another person designated to receive the ruling by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor." TEX. FAM. CODE ANN. § 33.004(c) (Vernon 2008).

Sealing Case

- g. Immediately after the court's opinion and judgment issue, the case file must be placed in an envelope, labeled with the style and appeal number of the case, and placed in the Court's safe.

**16. Merger**

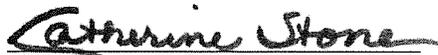
These Internal Operating Procedures for the Handling of Cases supplant all previous versions of the court's internal operating procedures and rules relating to the handling of cases. Accordingly, upon adoption of these Internal Operating Procedures for the Handling of Cases, supplanted procedures and rules shall be of no further force or effect.

**17. Amendment**

To amend these rules, the court must convene en banc.

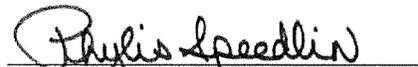
When convened en banc, a majority of the court's members constitutes a quorum; and the concurrence of a majority of the court sitting en banc is necessary for amendment.

These rules are adopted this 30th day of December, 2010.

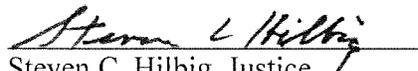
  
Catherine Stone, Chief Justice

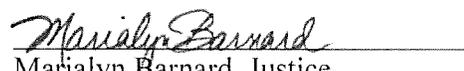
  
Karen Angelini, Justice

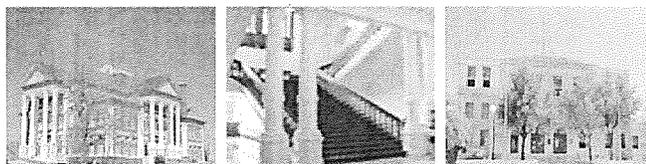
  
Sandee Bryan Marion, Justice

  
Phylis Speedlin, Justice

  
Rebecca Simmons, Justice

  
Steven C. Hilbig, Justice

  
Marialyn Barnard, Justice



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## Local Rules

Fourth Court of Appeals

Adopted September 23, 1998  
**Effective October 1, 1998**  
 Amended Effective September 27, 2011

*Approved by the Supreme Court of Texas  
 and the Texas Court of Criminal Appeals*

- Rule 1: Scope of Local Rules
  - Relationship to Tex. R. App. P.
  - Relationship to Jurisdiction
- Rule 2: Alternative Dispute Resolution (ADR)
- Rule 3: Papers Generally
  - 3.1: Papers Filed Before the Docketing Statement
  - 3.2: Filing by Fax
- Rule 4: Bankruptcy And Other Stays in Civil Cases
- Rule 5: Docketing Statements
  - 5.1: Forms
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- Rule 6: Motions
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  - 6.3: Objections to Visiting Judges
- Rule 7: Appellate Record
  - 7.1: Notice of Late Record
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  - 7.4: Filing an Electronic Clerk's Record
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  - 7.7: Suspension of Local Rules for Electronic Filings
- Rule 8: Briefs
  - 8.1: Number of Copies
  - 8.2: Time for Filing Briefs in Appeals in Habeas Corpus Proceedings
  - 8.3: Additional Citations
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  - 8.5: Post-Submission Briefs
- Rule 9: Oral Argument
  - 9.1: Time Allowed

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Rule  
10: Electronic Filings of Documents

Rule  
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## Forms

The Fourth Court of Appeals forms are available on the [Forms page](#).

### 1. Scope of Local Rules (TEX. R. APP. P. 1.2)

**1.1 Relationship to Tex. R. App. P.** These rules supplement the procedures in the Texas Rules of Appellate Procedure and, unless otherwise specified, apply to both civil and criminal cases. If the Texas Rules of Appellate Procedure conflict with these local rules, the Texas Rules of Appellate Procedure govern.

**1.2 Relationship to Jurisdiction.** These rules do not extend or limit the jurisdiction of this Court, but failure to comply with these rules may result in the dismissal of an appeal after the Court gives the noncomplying party notice and a reasonable opportunity to cure.

**Notes & Comments:** The notes and comments appended to the local rules are not part of the rules. Instead, they reflect the Court's general procedures and preferences and are provided for the convenience of the public.

### 2. Alternative Dispute Resolution (ADR)

On a party's motion, or on the Court's own initiative after reviewing the docketing statement, the Court may refer a civil case to alternative dispute resolution.

### 3. Papers Generally (TEX. R. APP. P. 9)

**3.1 Papers Filed Before the Docketing Statement.** If a document is filed in this Court before the appellant's docketing statement is filed, the certificate of service must include the names, addresses, and telephone numbers of each person served.

**3.2 Filing by Fax.** Documents of ten pages or less may be filed in this Court by fax. Documents may be faxed to the Court both during and after normal working hours. The Court is not responsible for events that disrupt, impair, or render impossible the receipt of documents transmitted by fax.

**Notes & Comments:** The Clerk will mail a file-marked copy of a document to any party who tenders an extra copy of the document and a postage-paid self-addressed envelope. The Court encourages parties to use the same method of service of a document on a party as is used in filing the document with the Court.

### 4. Bankruptcy and Other Stays in Civil Cases (TEX. R. APP. P. 8)

Any party may file a notice of bankruptcy or otherwise claim an automatic stay of the appeal as provided by federal or state law. The notice must be accompanied by an appropriate form of proof. The appeal will be abated and, for administrative purposes, treated as a closed case. However, the appeal may be reinstated on prompt motion of any party showing the stay has been lifted and specifying what further action, if any, is required from this Court.

## 5. Docketing Statements (TEX. R. APP. P. 32)

**5.1 Forms.** Each appellant must file a docketing statement and attach a signed copy of the judgment or order being appealed.

**5.2 Time to File.** The docketing statement must be filed in the Fourth Court of Appeals when the notice of appeal is filed.

**Notes & Comments:** To assist the efficient handling of cases, the Court encourages appellants to accurately complete the docketing statements adopted by the Court. See Appendix A (civil appeals), Appendix B (ADR), and Appendix C (criminal appeals).

## 6. Motions (TEX. R. APP. P. 10, 26.3, 38.6(d) & 49.8 (c))

**6.1 Number of Copies.** A party need only file an original and one copy of each motion.

**6.2 Motions for Rehearing.** A motion for rehearing en banc must be filed separately from a motion for rehearing.

**Notes & Comments:** Motions for extension of time are no longer required to file the appellate record, but they may be used for filing briefs. The titles of motions should be descriptive and indicate whether agreed or opposed and whether emergency relief is requested. Proposed orders should not be submitted. Parties should not wait for the Court's ruling on a motion for extension of time but should meet all deadlines at the earliest possible date. Any objection to a visiting judge should be filed within ten days of the date the Clerk sends the parties notice that a visiting judge has been assigned to the appeal.

## 7. Appellate Record (TEX. R. APP. P. 12.4, 34 & 35)

**7.1 Notice of Late Record.** If an official requires additional time to file a record, the official must request additional time from the Court using the form adopted by the Court. See Appendix D ("Official's Notice of Late Record"). Failure to file the record by the due date or according to the Court's directives will result in appropriate court action.

### 7.2 Withdrawal of the Record.

**(a) Attorneys of Record.** At any time before an appeal is set for submission, attorneys of record may withdraw all or part of a record without a motion for a period of 14 days. After the Clerk sends the parties notice setting the appeal for submission, attorneys may review a record in the Court's offices only.

**(b) Pro Se Parties.** Parties who are representing themselves and are not licensed attorneys may inspect a record only in designated areas within the Court's offices. However, the Court may grant a motion requesting permission to review the record on other terms.

**(c) Protection of the Record.** The record must not be disassembled.

**7.3 Preparation of Clerk's Record.** The trial court clerk must prepare and file the clerk's record in accordance with Rules 34.5 and 35. Even if more than one notice of appeal or request for inclusion of items is filed, the clerk should prepare only one record in a case. To prepare the clerk's record, the trial court clerk must:

(a) gather the documents required by Rule 34.5(a) and those requested by a party under Rule 34.5(b);

(b) start each document on a new page;

(c) include the date of filing on each document;

(d) arrange the documents in ascending chronological order, by date of filing or occurrence;

(e) start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively-including the front and back covers, tables of contents, certification page, and separator pages, if any-until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page;

(f) prepare, label, and certify the clerk's record as required by this rule;

(g) as far as practicable, include the date of signing by the judge on each order and judgment;

(h) include on the front cover of the first volume of the clerk's record, whether filed in paper or electronic form, the following information, in substantially the following form:

**CLERK'S RECORD**

VOLUME \_\_\_\_ of \_\_\_\_

Trial Court Cause No. \_\_\_\_\_

In the \_\_\_\_ (District or County) Court

of \_\_\_\_\_ County, Texas,

Honorable \_\_\_\_\_, Judge Presiding

\_\_\_\_\_, Plaintiffs)

vs.

\_\_\_\_\_, Defendant(s)

Appealed to the

(Supreme Court of Texas at Austin, Texas,  
or Court of Criminal Appeals of Texas at Austin, Texas,  
or Court of Appeals for the \_\_\_\_ District of Texas, at \_\_\_\_\_, Texas).

Attorney for Appellant(s):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone no.: \_\_\_\_\_

Fax no.: \_\_\_\_\_

E-mail address: \_\_\_\_\_

SBOT no.: \_\_\_\_\_

Attorney for: \_\_\_\_\_, Appellant(s)

Name of clerk preparing the clerk's record: \_\_\_\_\_

(i) include on the front cover of the second and subsequent volumes of the clerk's record the same information required under Rule 7.4(h), in substantially the same form;

(j) prepare and include after the front cover of the clerk's record a detailed table of contents identifying each document in the entire record (including sealed documents), the date each document was filed, and, except for sealed documents, the page on which each document begins. The table of contents must be double-spaced and conform to the order in which documents appear in the clerk's record, rather than in alphabetical order. If the clerk's record consists of multiple volumes, the table of contents must indicate the page on which each



(f) if there are multiple volumes in a clerk's record, use volume numbers pursuant to Rule 12.2(e)(6) to identify the sequential order of the volumes (e.g., Bexar-2009CR12209-CLR-Vol001.pdf, Bexar-200912209-CLR-Vol002.pdf, etc.);

(g) if filing a sealed document, include a hyphen, the number of the sealed document, and the term "Sealed" after the term "CLR" in the computer file name (e.g., Bexar-2009CR12209-CLR-1Sealed.pdf, Bexar-2009CR12209-CLR-2Sealed.pdf), and file each sealed document separately from the remainder of the clerk's record;

(h) if filing a supplement to the clerk's record, include a hyphen, the number of the supplement, the term "Supp," and another hyphen after the term "CLR" in the computer file name (e.g., Bexar-2009CR12209-CLR-1Supp-Vol001.pdf, Bexar-2009CR12209-CLR-2Supp-Vol001.pdf); and

(i) submit each computer file to the Texas Appeals Management and E-filing System web portal, using the guidelines of the Fourth Court of Appeals' website.

**7.5 Filing a Paper Clerk's Record.** When filing a paper record, the trial court clerk must:

(a) bind the documents together in one or more volumes with a top bound, two-inch capacity, two-and-three-quarter-inch, center-to-center removable fastener and no other binding materials, like wax, ribbon, glue, staples, tape, etc.;

(b) include no more than 500 pages in each volume including the cover page;

(c) include only one-sided copies in the clerk's record;

(d) number the first volume "1" and each succeeding volume sequentially;

(e) if practicable, make a legible copy of the documents on opaque, white, 8<sup>1/2</sup> x 11 inch paper; and

(f) place each sealed document in a securely sealed, manila envelope that is not bound with the other documents in the clerk's record.

In the event of a material violation of this rule in the preparation of the clerk's record, on motion of a party or on its own initiative, the appellate court may require the trial court clerk to amend the clerk's record or to prepare a new clerk's record in proper form - and provide it to any party who has previously made a copy of the original, defective clerk's record - at the trial clerk's expense. A supplement to a clerk's record must also be prepared in conformity with this rule.

**7.6 Electronic Reporter's Record.**

(a) The court reporter or court recorder must prepare and file the reporter's record in accordance with Rules 34.6 and 35 of the Texas Rules of Appellate Procedure and the Uniform Format Manual for Texas Reporters' Records. Even if more than one notice of appeal or request for preparation of the record is filed, the court reporter or court recorder should prepare only one record in the case.

(b) If proceedings were recorded stenographically, in lieu of filing the reporter's record of the proceedings on paper, the court reporter must file the reporter's record in an electronic format via the Texas Appeals Management and E-filing System web portal, in accordance with Section 8 of the Uniform Format Manual for Texas Reporters' Records and the guidelines posted on the Fourth Court of Appeals' website.

(c) In the event of a material violation of this rule in the preparation of a reporter's record, on motion of a party or on the court's own initiative, the appellate court may require the court reporter or court recorder to amend the reporter's record or to prepare a new reporter's record in proper form and provide it to any party who has previously made a copy of the

original, defective reporter's record-at the reporter's or recorder's expense. A court reporter who fails to comply with the requirements of the Uniform Format Manual for Texas Reporters' Records is also subject to discipline by the Court Reporters Certification Board.

**7.7 Suspension of Local Rules for Electronic Filings.** Upon receipt of a motion or on its own initiative, the Fourth Court of Appeals may, to expedite a decision or for other good cause, suspend a local rule pertaining to the filing of electronic records in a particular case and order a different procedure in accordance with the Texas Rules of Appellate Procedure.

**Notes & Comments:** The Court generally permits additional time to file a record, up to 60 days from the original due date. Any additional time may be permitted at the Court's discretion. Counsel is reminded that filing a supplemental record does not alter the briefing schedule. Counsel and trial court clerks are also reminded that documents sealed by order of the trial court or otherwise described by statute as confidential (such as juror information sheets) should be filed separately from unsealed portions of the record and should be accompanied by the sealing order, if any. This Court may also seal records if requested. If a record is damaged by a party or attorney, the Court may order the record recertified and invoke any available remedy, including those provided by the Texas Penal Code. In criminal cases, the parties may use the copy of the appellate record filed with the trial court clerk in addition to the copy filed with this Court.

## **8. Briefs** **(TEX. R. APP. P. 9, 31.1 & 38)**

**8.1 Number of Copies.** The number of copies of a brief that must be filed is governed by Rule 9.3 of the Texas Rules of Appellate Procedure.

### **8.2 Time for Filing Briefs in Appeals in Habeas Corpus & Bail Proceedings**

**(a) Appellant's Brief.** The appellant's brief must be filed no later than 20 days after the date the clerk's record or the reporter's record is filed, whichever is later.

**(b) State's Brief.** The State's brief must be filed no later than 20 days after the date the appellant's brief is filed.

**8.3 Additional Citations.** A party may file a letter containing additional citations with succinct comment, at any time without leave of Court.

**8.4 Amendment or Supplementation.** If a party wishes to amend or supplement the party's brief other than in the manner permitted by Local Rule 8.3, the party must obtain the Court's permission.

### **8.5 Post-Submission Briefs.**

**(a) Requested by the Court.** If the Court requests a post-submission brief, the brief must be filed at the time indicated by the Court; or, if no time is specified, within ten days after the Court's request. An opposing party's reply to a post-submission brief requested by the Court must be filed no later than ten days after the date of the brief requested by the Court. If an additional post-submission brief is requested by the Court, the aggregate page limits contained in the Texas Rules of Appellate Procedure do not apply.

**(b) Not Requested by the Court.** If a party wishes to file a post-submission brief that has not been requested by the Court, the party must obtain the Court's permission.

**Notes & Comments:** Citations should use jump cites or pinpoint cites and should conform to the most recent editions of Harvard L. Rev., A Uniform System of Citation (the Bluebook), and Tex. L. Rev., Texas Rules of Form (the Greenbook). The Court encourages the use of appendices, especially for federal authorities not found in its own library. The reporter's record may be referred to as "RR" and the clerk's record as "CR." As a general rule, the Court will not give permission to file a brief containing additional issues or points of error after a case has been submitted to the Court for decision. The Court interprets the term "amended brief" to mean a brief that completely replaces the original brief. Pursuant to administrative order of the Court, the Clerk of the Court is authorized to attest to per curiam orders granting

extensions of time to file briefs. The Court generally grants a requested extension of time to file a brief, up to 60 days from the original due date. Additional time may be granted at the Court's discretion. An appellant who is also in the position of appellee may request permission to file a combination brief.

### **9. Oral Argument (TEX. R. APP. P. 39)**

**9.1 Time Allowed.** Oral argument will be limited to 20 minutes for the appellant's opening argument, 20 minutes for the appellee's argument, and ten minutes for the appellant's rebuttal.

**9.2 Waiver.** Any party who requests oral argument and later decides to waive argument must notify the Court and the other parties in writing before the date set for submission.

**9.3 Failure to Appear.** Any attorney or party who wishes to present argument must register in the Clerk's office 30 minutes before the time scheduled for argument and must also orally announce their appearance in the courtroom at the time scheduled for argument. If an attorney or party fails to comply with this rule, the Court will deem oral argument waived and may take any other appropriate action.

**9.4 Audio Recordings.** The Court makes audio recordings of oral argument for its own use. However, a party may purchase a copy of the recording from the Clerk. The Court does not guarantee the recording will be clear or audible, and the Court will generally not grant a rehearing because the recording is not clear or audible.

**Notes & Comments:** If oral argument is waived, a case may receive expedited consideration. If an issue or point of error raised in a brief is not discussed at argument, the Court will nonetheless consider the issue or point of error preserved for appellate review. If an attorney or party intends to cite a case that is not contained in the briefs, the attorney or party should provide a copy of the case to the Clerk and opposing counsel before argument. The Court monitors the time during oral argument.

### **10. Electronic Filings of Documents**

**(a) Electronic filing permitted.** A party may electronically file (e-file) any document that may be filed with the court in paper form, except a document under seal or subject to a motion to seal.

**(b) E-filing mechanism.** E-filing must be done through Texas.gov, the portal established by the Texas Legislature. Directions for its use may be found on its website. This is a summary. A person must first register with an Electronic Filing Service Provider (EFSP). A list of approved EFSPs is on the Texas.gov website. The EFSP will provide the registrant with a confidential, secure username and password to use when e-filing a document. This username and password will also function as a signature on each e-filed document, and will authorize payment of all filing fees and service fees. A document to be e-filed must be transmitted to the EFSP, which will send the document to Texas.gov, which in turn will send the document to the clerk. The e-filer will receive by email an immediate acknowledgment of the e-filing, a confirmation of the clerk's acceptance of the filing, and a file-stamped copy of the document. Fees charged by Texas.gov for the e-filing of a document are in addition to any filing fees and are costs of court.

**(c) Electronic service.** A party who has registered to e-file documents through an EFSP may electronically serve (e-serve) documents through that EFSP on any other party who has consented to e-service by registering for the e-service option with an EFSP or by setting up a complimentary account with Texas.gov. Directions may be found on the Texas.gov website.

(1) Service through an EFSP is complete on transmission to the e-served person's EFSP or complimentary Texas.gov account. The e-filer's EFSP will send proof of service to the e-filer. Fees that an EFSP charges for e-service are not costs of court.

(2) If an e-filer must serve a copy of a document on a party who has not consented to e-service, the e-filer must comply with the service requirements in Texas Rule of Appellate Procedure 9.5 and, on the same day the document is e-filed, must send the document to:

(A) the party's lead counsel by email if the e-filer has an email address for the lead counsel; or

(B) if the party is not represented by counsel, to the party by email if the e-filer has the party's email address.

**(d) Redaction of information in e-filed document.**

(1) Unless the court orders otherwise, an e-filed document must not contain a social security number; a birth date; a home address; the name of any person who was a minor when the underlying suit was filed; a driver's license number, passport number, tax identification number, or similar government-issued personal identification number; or a bank account number, credit card number, or other financial account number. The e-filer must redact all of this information in accordance with the redaction guidelines posted by the Supreme Court's Clerk on the Supreme Court's website; however, the e-filed document may contain a reference to this information as long as the reference does not include any part of the actual information (e.g., "passport number"). For good cause, the court may order redaction of additional information.

(2) The e-filing of a document constitutes a certification by all attorneys of record for the party filing the document that the document complies with paragraph (1) of this rule.

(3) If an e-filer believes any information described in paragraph (1) of this rule is essential to an e-filed document or that the e-filed document would be confusing without the information, the e-filer may submit the information to the court in a reference list that is in paper form and under seal. The reference list must specify an appropriate identifier that corresponds uniquely to each item listed. Any reference in the e-filed document to a listed identifier will be construed to refer to the corresponding item of information. If the e-filer provides a reference list pursuant to this rule, the front page of the e-filed document must indicate that the reference list has been, or will be, provided.

(4) On its own initiative, the court may order a sealed reference list in any case. The court may also order that a document be filed under seal in paper form, without redaction. The court may later unseal the document or order the filer to provide a redacted version of the document for the public record.

**(e) Format of e-filed document.** An e-filed document must be formatted as follows:

(1) An e-filed document must be formatted in accordance with Texas Rule of Appellate Procedure 9.4(b)-(e). The "paper" requirements in Rule 9.4(b)-(c) apply equally to a "page" of the e-filed document.

(2) An e-filed document must be in text-searchable portable document format (PDF) compatible with the latest version of Adobe Reader. An EFSP will convert each e-filed document from its original form into a PDF file that complies with this rule.

(3) Records filed in original proceedings and appendix materials may be scanned if necessary, but scanning creates larger file sizes with images of lesser quality and should be avoided when possible. An appendix must be combined into one computer file with the document it is associated with, unless the resulting computer file would exceed Texas.gov's size limits for the document. If a record filed in an original proceeding or an appendix contains more than one item, it should include a table of contents and either bookmarks to assist in locating each item or separator pages with the title of the item

immediately following and any number or letter associated with the item in the table of contents.

(4) A scanned document must be made searchable using optical-character-recognition software, such as Adobe Acrobat, and have a resolution of 300 dots per inch (dpi).

(5) An e-filed document may contain hyperlinks to another part of the same document, an external source cited in the document, an appendix item associated with the document, an embedded case, or a record cite. Hyperlinks within an appendix item are also permitted.

(6) An e-filed document must not contain a virus or malware. The e-filing of a document constitutes a certification by the e-filer that the document has been checked for viruses and malware.

(7) The court may strike an e-filed document for nonconformance with this rule.

**(f) Signatures on e-filed documents.**

(1) Except as otherwise provided by this rule, the confidential, secure username and password that the e-filer must use to e-file a document constitute the e-filer's signature on the document, in compliance with signature requirements in the Texas Rules of Appellate Procedure. When a signature is provided in this manner, the e-filer must also include either an "/s/" and the e-filer's name typed in the space where the e-filer's signature would otherwise appear or an electronic image of the e-filer's signature, which may take the form of a public key-based digital signature or a scanned image of the e-filer's signature. The e-filer must not allow the e-filer's username or password to be used by anyone other than an agent who is authorized by the e-filer.

(2) If a document must be notarized, sworn to, or made under oath, the e-filer must e-file the document as a scanned image containing the necessary signature(s).

(3) If a document requires the signature of an opposing party, the e-filer must e-file the document as a scanned image containing the opposing party's signature.

(4) When an e-filer e-files a scanned image of a document pursuant to paragraph (2) or (3) of this rule, the e-filer must retain the original document from which the scanned image was made until the case in which the document was filed is resolved. If the original document is in another party's possession, that party must retain the original document until the case in which the document was filed is resolved.

(5) If an e-served document was also e-filed and the person who completes a certificate of service under Texas Rule of Appellate Procedure 9.5(e) is different from the person who e-filed the document, the person who completes the certificate of service must sign the certificate by including either an "/s/" and his or her name typed in the space where his or her signature would otherwise appear or an electronic image of his or her signature.

**(g) Time of e-filing.** A document will be considered filed timely if it is e-filed at any time before midnight (in the court's time zone) on the date on which the document is due.

(1) An e-filed document is deemed filed when the e-filer transmits the document to the e-filer's EFSP, unless the document is transmitted on a Saturday, Sunday, or legal holiday or requires a motion and an order allowing its filing.

(2) If a document is transmitted on a Saturday, Sunday, or legal holiday, it will be deemed filed on the next day that is not a Saturday, Sunday, or legal holiday.

(3) If a document requires a motion and an order allowing its filing, it will be deemed filed on the date the motion is granted.

(4) If an e-filed document is untimely due to a technical failure or a system outage, the e-filer may seek appropriate relief from the court.

**(h) Paper copies.** An e-filer is not required to file any paper copies of an e-filed document, except that paper copies of a petition for discretionary review must still be filed in accordance with Rule 9 of the Texas Rules of Appellate Procedure within one business day after the petition is e-filed.

**(i) Email address requirements and communications with the clerk.** An e-filed document must include the e-filer's email address, in addition to any other information required by the Texas Rules of Appellate Procedure. If the e-filer's email address changes, the e-filer must provide the clerk and the e-filer's EFSP with the new email address within one business day of the change. If there is a change in the email address of a party who has consented to receive e-service, the party must provide Texas.gov or, if applicable, the party's EFSP with the new email address within one business day of the change. The clerk may send notices or other communications about a case to an attorney's email address in lieu of mailing paper documents.

**(j) Casemail registration.** Lead counsel must register for Casemail and follow the instructions for receiving notices for cases in which they represent a party.

**(k) Construction of rules.** This rule must be liberally construed so as to avoid undue prejudice to any person who makes a good-faith effort to comply with requirements in this rule.

### 11. Unbound Copy Required if Opt Not to E-File

If a party opts not to e-file a document and to file the document in paper form instead, the original document filed with the court must be in the form provided by Rule 9.4 of the Texas Rules of Appellate Procedure. However, one of the copies must be unbound and one-sided and contain no hard covers, tabs, or any other item that would impede the scanning of the document. In lieu of tabs, separator pages with the title of the item immediately following should be used.

### ORDER ADOPTING LOCAL RULES

IT IS ORDERED that, effective October 1, 1998, these rules are adopted as local rules for the Fourth Court of Appeals with the permission of the Texas Supreme Court and Texas Court of Criminal Appeals. The notes and comments appended to the local rules are not part of the rules and do not have the same force and effect as the rules. All local rules promulgated before October 1, 1998 are rescinded, but this shall not affect any proper action taken pursuant to such rescinded rules prior to the effective date of the rules adopted herein. Done September 23, 1998, effective October 1, 1998.

IT IS ORDERED that, effective June 1, 2011, an amendment to Local Rule 7 has been adopted to add five additional subsections to the local rules for the Fourth Court of Appeals subject to the approval of the Texas Supreme Court and the Texas Court of Criminal Appeals. Done April 19, 2011, effective June 1, 2011.

IT IS ORDERED that, effective September 27, 2011, an amendment to the local rules for the Fourth Court of Appeals was adopted to amend Local Rule 7.4(f) and to add Local Rules 10 and 11. Done September 6, 2011, effective September 27, 2011.

Updated: 20-Dec-2011



Fourth Court of Appeals • Cadena-Reeves Justice Center • 300 Dolorosa, Ste. 3200 • San Antonio, TX 78205-3037 • (210) 335-2635  
 Accessibility Policy | Privacy & Security Policy | Open Records Policy | State Web Site Link & Privacy Policy | Email TCO  
 Texas.gov | TRAIL | Texas Homeland Security | Where the Money Goes | Legislative Appropriations Request [pdf]  
 Operating Budget [pdf] | FY 2010-11 5% Budget Cuts [pdf]

Survey Response

**Texas**

14<sup>th</sup> Court of Appeals

**STATE APPELLATE MEDIATION PROGRAM SURVEY**  
**FOURTEENTH COURT OF APPEALS, HOUSTON, TEXAS**

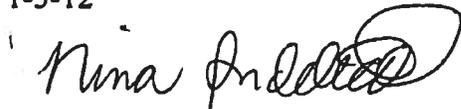
1. 1997.
2. Developed Internal Operating Procedures pursuant to state statute. *See* Tex. Civ. Prac. & Rem. Code §§ 154.021—.073.
3. Mediation is ordered, but parties have an opportunity to file an objection.
4. 1997. (Mediations are conducted by outside mediators who are not affiliated with the court.)
5. Approximately 650 new civil appeals are filed each year.
6. The decision is made after review of the docketing statements filed by the parties. The parties state whether they think the case is appropriate for mediation, and if not appropriate, state why it is not. They describe the type of case and rank it for difficulty on a scale of 1-5. They also state whether the case has mediated before, and if so, at what stage of the proceedings (e.g., pre-trial, post-judgment, etc.) A staff attorney reviews the docketing statements and makes a recommendation to the justices, who make the decision whether to order mediation based on these factors. The justices also rule on any objections. We exclude accelerated cases (primarily interlocutory appeals).
7. 36
8. 9 full settlements; stats on partial settlements not kept.
9. We do not track partial settlements. Often some issues may be resolved, but we are not aware because mediation is confidential.
10. We do not exclude self-represented parties, but do not separately track those cases. We do not offer mediation to incarcerated persons.
11. Mediators are selected by the parties.
12. Mediators must have completed at least 40 hours ADR training, plus an additional 24 hours of specialized training for family law cases.
13. The parties select the mediator. If the parties do not agree on a mediator, each side will name two proposed mediators and the court will choose one by random draw.

14. One mediator.
15. Mediation is confidential. Because we use outside mediators, we cannot answer.
16. See No. 6
17. No separate cost to the court.
18. We have 3 central staff attorneys who assist in administration of the program. No mediators are court employees.
19. Parties may file a written objection within 10 days of the order. The judges review the objections on a case-by-case basis. Cases involving family violence are exempted by statute.
20. Generally, we would have authority to sanction a party for failure to comply with a court order. Such authority has rarely, if error, been used in mediation. The court has threatened to dismiss an appeal for failure to comply with a mediation order.
21. We do not keep statistics on the types of cases mediated. The most common types are contract cases and family law matters.
22. Same.
23. Because we are under legislatively mandated performance measures to dispose of cases promptly, we now limit the mediation period to the 60-day period initially ordered and rarely extend the time period.
24. When parties who objected to mediation are able to settle the case.
25. Resistance by the parties.
26. The settlement of any case relieves the justices of the time required to prepare for submission or oral argument and drafting an opinion.
27. See attached.
28. No

Fourteenth Court of Appeals  
Civil and Criminal Intermediate Appellate Jurisdiction  
Cases from 10 counties in the Houston, Texas area  
Nina Reilly Indelicato, Chief Staff Attorney  
301 Fannin, Room 245  
Houston, TX 77002  
713.274.2800  
[Nina.indelicato@txcourts.gov](mailto:Nina.indelicato@txcourts.gov)  
[www.14thcoa.courts.stste.tx.us](http://www.14thcoa.courts.stste.tx.us)

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

1-3-12

A handwritten signature in black ink that reads "Nina Indelicato". The signature is written in a cursive style with a large, looping flourish at the end.

Nina Indelicato  
Chief Staff Attorney



## **Fourteenth Court of Appeals**

### **ALTERNATE DISPUTE RESOLUTION PROCEDURES**

The Texas Alternative Dispute Resolution Procedures Act states it is the policy of this State to encourage the peaceable resolution of disputes and the early settlement of pending litigation through voluntary settlement procedures.

The Act provides the court may, *sua sponte*, or on the motion of either party, refer a pending case to alternative dispute resolution (ADR).

The goals of ADR are: (1) to increase party participation in, and satisfaction with, the judicial system; (2) to provide an alternate forum for readily accessible, fair, and appropriate means to resolve disputes; (3) to reduce the time and costs of litigation; and (4) to ease the court's heavy docket.

#### **Procedures:**

1. Appellant must complete and file this court's docketing statement within 15 days of the date of the 32.1 notice letter from our court. Within that docketing statement is a mediation section. Appellant must answer every question within the mediation section. Appellee must complete the mediation docketing statement or the docketing statement within 15 days of the date of the 32.1 notice letter from our court.
2. Once the completed docketing statement and the mediation docketing statement are returned, the court promptly reviews them to determine whether the case should be referred to mediation. Failure to complete and file the statements is considered an agreement to attend mediation.
3. If the case is referred to mediation, the court notifies the parties by order.
4. If the case is not referred to mediation, the case continues along the normal appellate track.
5. Any party may file a written objection to the ADR referral order within 10 days of the date of the order. Any objection not filed within 10 days will be overruled.
6. The court shall review the objection and make a ruling within 10 days after its receipt. If the court finds a reasonable basis for the objection, it will sustain the objection and withdraw the mediation order.
7. The parties must agree on a mediator or, if they are unable to agree, must each

submit the name of two acceptable mediators within 10 days of the date of the mediation or within 10 days of the date any objection is overruled by the court. When the parties cannot agree, the court will randomly select a mediator from the names submitted by the parties.

8. Once a mediator is chosen, the court will notify the mediator by letter. Attached to the letter will be a copy of the mediation order and a blank mediator's report.
9. Mediation shall be conducted within 60 days of entry of the order of referral. The court may extend or change this time period at the request of a party, so long as the change does not delay administration of the court.
10. The appellate time table shall be suspended for 60 days from the date the order of referral is entered.
11. The mediator must file his or her report with the court within 48 hours of the completion of mediation.
12. Upon settlement, the parties must file a dispositive motion within 10 days of the date mediation successfully concludes.
13. Failure to comply with any provisions of the court's mediation order may result in sanctions, including contempt and/or dismissal.

**Standards for Mediators:**

1. Mediators must have completed at least forty ADR training hours. For family law cases, mediators must have an additional twenty-four hours in childhood development, family law, and family dynamics.
2. The court expects mediators to comply with ethical guidelines adopted by the ADR Section of the State Bar of Texas.

Appellate Docket Number: \_\_\_\_\_

Appellate Case Style:

\*\*\*For Civil Appeals, see Section X for information about the Pro Bono Program sponsored and administered by the Pro Bono Committees of the Appellate Practice Sections of the State Bar of Texas and the Houston Bar Association.

**DOCKETING STATEMENT (CIVIL)**

Fourteenth Court of Appeals

[to be filed in the court of appeals upon perfection of appeal under TRAP 32]

**I. Parties (TRAP 32.1(a), (e)):**

Appellant(s):

Appellee(s):

(See note at bottom of page)

(See note at bottom of page)

Attorney (lead appellate counsel):

Attorney (lead appellate counsel, if known; if not, then trial counsel):

Address (lead counsel):

Address (lead appellate counsel, if known; if not, then trial counsel):

Email address:

Email address:

Telephone:  
(include area code)

Telephone:  
(include area code)

Telecopy:  
(include area code)

Telecopy:  
(include area code)

SBN (lead counsel):

SBN (lead counsel):

If not represented by counsel, provide appellant's/appellee's address, email address, telephone number, and telecopy number. On Attachment 1, or a separate attachment if needed, list the same information stated above for any additional parties to the trial court's judgment.

II. Perfection Of Appeal And Jurisdiction (TRAP 32.1(b), (c), (g), (j)):			
Date order or judgment signed: (Attach a signed copy, if possible)		Date notice of appeal filed in trial court: (Attach file-stamped copy; if mailed to the trial court clerk, also give the date of mailing)	
What type of judgment? (e.g., jury trial, bench trial, summary judgment, directed verdict, other (specify))  If money judgment, what was the amount?  Actual damages:  Punitive (or similar) damages:  Attorneys' fees (trial):  Attorneys' fees (appellate):  Other (specify):		Interlocutory appeal of appealable order:  Yes <input type="checkbox"/> No <input type="checkbox"/>  (Please specify statutory or other basis on which interlocutory order is appealable) (See TRAP 28)  Accelerated appeal (See TRAP 28):  Yes <input type="checkbox"/> No <input type="checkbox"/>  (Please specify statutory or other basis on which appeal is accelerated)  Appeal that receives precedence, preference, or priority under statute or rule?  Yes <input type="checkbox"/> No <input type="checkbox"/> (Please specify statutory or other basis for such status)	
III. Actions Extending Time To Perfect Appeal (TRAP 32.1(d)):			
Action	Filed Check as appropriate		Date Filed
Motion for New Trial	No <input type="checkbox"/>	Yes <input type="checkbox"/>	
Motion to Modify Judgment	No <input type="checkbox"/>	Yes <input type="checkbox"/>	
Request for Findings of Fact and Conclusions of Law	No <input type="checkbox"/>	Yes <input type="checkbox"/>	

Motion to Reinstate	No <input type="checkbox"/>	Yes <input type="checkbox"/>	
Motion under TRCP 306a	No <input type="checkbox"/>	Yes <input type="checkbox"/>	
Other (specify):	No <input type="checkbox"/>	Yes <input type="checkbox"/>	

**IV. Indigency Of Party (TRAP 32.1(k)): (Attach file-stamped copy of affidavit)**

Event	Filed Check as appropriate		Date	N/A
Affidavit filed	No <input type="checkbox"/>	Yes <input type="checkbox"/>		
Contest filed	No <input type="checkbox"/>	Yes <input type="checkbox"/>		
Date ruling on contest due:				
Ruling on contest: Sustained <input type="checkbox"/> Overruled <input type="checkbox"/>				

**V. Bankruptcy (TRAP 8):**

Will the appeal be stayed by bankruptcy? \_\_\_\_\_ Date bankruptcy filed? \_\_\_\_\_  
 Name of bankruptcy court: \_\_\_\_\_ Bankruptcy Case No.: \_\_\_\_\_  
 Style of bankruptcy case: \_\_\_\_\_

**VI. Trial Court And Record (TRAP 32.1(c), (h), (l)):**

Court:	County:	Trial Court Docket Number (Cause No.):
Trial Judge (who tried or disposed of case):		Court Clerk (district clerk):
Telephone Number: (include area code)		Telephone Number: (include area code)
:		:

Address:		Address:	
Clerk's Record Yes <input type="checkbox"/>	Sworn copy for accelerated appeal Yes <input type="checkbox"/> (See TRAP 28.3)	Will request <input type="checkbox"/> (Note: No request required under TRAP 34.5(a), (b))	Was requested on:
Court Reporter or Court Recorder:		Court Reporter or Court Recorder:	
Telephone Number: (include area code)		Telephone Number: (include area code)	
Telecopy Number: (include area code)		Telecopy Number: (include area code)	
Address:		Address:	
(Attach additional sheet if necessary for additional court reporters/recorders)			
Length of trial (approximate):		State arrangements made for payment of court reporter/recorder:	
Reporter's or Recorder's Record (check if electronic recording <input type="checkbox"/>	None <input type="checkbox"/>	Will request <input type="checkbox"/>	Was requested on:
<b>VII. Nature Of The Case (TRAP 32.1(f))</b>			
(Subject matter or type of case: <i>E.g.</i> , personal injury, breach of contract, workers' compensation, condemnation, DTPA, employment/labor, family code, juvenile, malpractice, probate, UCC, tax, oil & gas, real property or temporary injunction):			

**VIII. Supersedeas Bond (TRAP 32.1(1)):**

None

Will file

Was filed on:

**IX. Extraordinary Relief:**

Will you request extraordinary relief (e.g., temporary or ancillary relief) from this Court? Yes  No   
If yes, briefly state the basis for your request.

**X. Pro Bono Program:**

The Pro Bono Committees of the Appellate Practice Sections of the State Bar of Texas and the Houston Bar Association are participating in a Pro Bono Program to place a limited number of civil appeals with appellate counsel who will represent the appellant/appellee in the appeal before the Fourteenth Court.

The Pro Bono Committee is solely responsible for screening and selecting the civil cases for inclusion in the Program based upon a number of discretionary criteria, including the financial means of the appellant. If a case is selected by the Committee, and can be matched with appellate counsel, that counsel will take over representation of the appellant without charging legal fees. More information regarding this program can be found in the *Pro Bono Program Pamphlet* available at the State Bar of Texas Appellate Pro Bono website, <http://www.tex-app.org/probono.php>, and the Houston Bar Association Appellate Section website, <http://www.hba.org/folder-sections/sec-appellate.htm>. If your case is selected and matched with a volunteer lawyer, you will receive a letter from the Pro Bono Committee within thirty (30) to forty-five (45) days after submitting this Docketing Statement.

**NOTE:** There is no guarantee that, if you submit your case for possible inclusion in the Pro Bono Program, the Pro Bono Committee will select your case and that pro bono counsel can be found to represent you. Accordingly, you should not forego seeking other counsel to represent you in this proceeding. By signing your name below, you are authorizing the Pro Bono Committee to transmit publicly available facts and information about your case, including parties and background, through selected Internet sites and a Listserv to its pool of volunteer appellate attorneys.

1. Do you want this case to be considered for inclusion in the Pro Bono Program?

Yes  No

If you answered "Yes" to Question X.1, then please answer the following questions.

2. Do you authorize the Pro Bono Committee to contact your trial counsel of record in this matter to answer questions the committee may have regarding the appeal? Please note that any such conversations would be maintained as confidential by the Pro Bono Committee and the information used solely for the purposes of considering the case for inclusion in the Pro Bono Program.

Yes  No

3. If you have not previously filed an affidavit of indigency and attached a file-stamped copy of that affidavit, does your income exceed 200% of the U.S. Department of Health and Human Services Federal Poverty Guidelines? These guidelines can be found in the *Pro Bono Program Pamphlet* as well as on the Internet at <http://aspe.hhs.gov/poverty/06poverty.shtml>.

Yes  No

4. Are you willing to disclose your financial circumstances to the Pro Bono Committee? If so, please attach an Affidavit of Indigency completed and executed by the appellant. Sample forms are available at the State Bar of Texas Appellate Pro Bono website, <http://www.tex-app.org/probono.php>, and the Houston Bar Association Appellate Section website, <http://www.hba.org/folder-sections/sec-appellate.htm>. Your participation in the Pro Bono Program may be conditioned upon your execution of an affidavit under oath as to your financial circumstances.

Yes  No

5. Give a brief description of the issues to be raised on appeal, the relief sought, and the applicable standard of review, if known (without prejudice to the right to raise additional issues or request additional relief; use a separate attachment, if necessary).

**XI. Alternative Dispute Resolution/Mediation (if applicable)**

(As of 8/19/97, these programs exist in the 1st (Houston), 3rd (Austin), 4th (San Antonio), 5th (Dallas), 9th (Beaumont), 13th (Corpus Christi), and 14th (Houston)). (Use additional sheets, if necessary).

1. Should this appeal be referred to mediation? Yes  No

If not, why not.

2. Has the case been through an ADR procedure in the trial court? Yes  No

If yes, answer the following:

a. Who was the mediator?

b. What type of ADR procedure?

c. At what stage did the case go through ADR? (Specify pre-trial, trial, post-trial, other)

d. Rate the case for complexity. Use 1 for the least complex and 5 for the most complex. Check one.

1  2  3  4  5

e. Can the parties agree on an appellate mediator? If yes, give name, address, and telephone and telecopy numbers (with area codes).

f. Languages other than English in which the mediator should be proficient:

**XII. Related Matters:**

List any pending or past related appeals or original proceedings (e.g., mandamus, injunction, habeas corpus) before this or any other Texas appellate court by court, docket number, and style.

**XIII. Any other information requested by the court (see attachments, if any).**

**XIV. Signature:**

\_\_\_\_\_ Date: \_\_\_\_\_

Signature of counsel (or pro se party) State Bar No.: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**XV. Certificate of Service:**

The undersigned counsel certifies that this docketing statement has been served on the following lead counsel for all parties to the trial court's order or judgment as follows on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

(TRAP 9.5(e) requirements stated below; use additional sheets, if necessary)

**Note: Certificate of Service Requirements (TRAP 9.5(e)):** A certificate of service must be signed by the person who made the service and must state:

- (1) the date and manner of service;
- (2) the name and address of each person served; and
- (3) if the person served is a party's attorney, the name of the party represented by that attorney.

**FOURTEENTH COURT OF APPEALS  
CIVIL APPEAL MEDIATION DOCKETING STATEMENT**

**RETURN WITHIN 15 DAYS TO:**

**CLERK, FOURTEENTH COURT OF APPEALS;  
301 FANNIN, ROOM 245; HOUSTON, TEXAS 77002**

\*\*\*For Civil Appeals, see Section V for information about the Pro Bono Program sponsored and administered by the Pro Bono Committees of the Appellate Practice Sections of the State Bar of Texas and the Houston Bar Association.

**I. General Information:**

Appellant(s):

Appellate Cause No.:

Appellee(s):

Trial Ct. Cause No.:

Other:

County:

Trial Court:

**II. Timetable:**

Appeal stayed by bankruptcy. Date bankruptcy filed:

List: name of bankruptcy court:

bankruptcy case number:

style of bankruptcy filing:

**III. Jurisdiction:**

Will you challenge this court's jurisdiction?

No

Yes

**IV. Indigency Of Party (TRAP 32.1(k)): (Attach file-stamped copy of affidavit)**

Event	Filed Check as appropriate		Date	N/A
	No <input type="checkbox"/>	Yes <input type="checkbox"/>		
Affidavit filed	No <input type="checkbox"/>	Yes <input type="checkbox"/>		
Contest filed	No <input type="checkbox"/>	Yes <input type="checkbox"/>		
Date ruling on contest due:				
Ruling on contest: Sustained <input type="checkbox"/> Overruled <input type="checkbox"/>				

**V. Pro Bono Pilot Program:**

The Pro Bono Committees of the Appellate Practice Sections of the State Bar of Texas and the Houston Bar Association are participating in a Pro Bono Program to place a limited number of civil appeals with appellate counsel who will represent the appellant/appellee in the appeal before the Fourteenth Court of Appeals.

The Pro Bono Committee is solely responsible for screening and selecting the civil cases for inclusion in the Pilot Program based upon a number of discretionary criteria, including the financial means of the appellee. If a case is selected by the Committee, and can be matched with appellate counsel, that counsel will take over representation of the appellee without charging legal fees. More information regarding this program can be found in the *Pro Bono Pilot Program Pamphlet* available in paper form at the Clerk's Office or on the Internet at <http://www.tex-app.org> and <http://www.hba.org/folder-sections/sec-appellate.htm>. If your case is selected and matched with a volunteer lawyer, you will receive a letter from the Pro Bono Pilot Committee within thirty (30) to forty-five (45) days after submitting this Docketing Statement.

**NOTE:** There is no guarantee that, if you submit your case for possible inclusion in the Pro Bono Program, the Pro Bono Committee will select your case and that pro bono counsel can be found to represent you. Accordingly, you should not forego seeking other counsel to represent you in this proceeding. By signing your name below, you are authorizing the Pro Bono Committee to transmit publicly available facts and information about your case, including parties and background, through selected Internet sites and a Listserv to its pool of volunteer appellate attorneys.

1. Do you want this case to be considered for inclusion in the Pro Bono Pilot Program?

Yes  No

If you answered "Yes" to Question V.1, then please answer the following questions.

2. Do you authorize the Pro Bono Committee to contact your trial counsel of record in this matter to answer questions the committee may have regarding the appeal? Please note that any such conversations would be maintained as confidential by the Pro Bono Committee and the information used solely for the purposes of considering the case for inclusion in the Pro Bono Program.

Yes  No

3. If you have not previously filed an affidavit of indigency and attached a file-stamped copy of that affidavit, does your income exceed 200% of the U.S. Department of Health and Human Services Federal Poverty Guidelines? These guidelines can be found in the *Pro Bono Program Pamphlet* as well as on the Internet at <http://aspe.hhs.gov/poverty/06poverty.shtml>.

Yes  No

4. Are you willing to disclose your financial circumstances to the Pro Bono Committee? If so, please attach an Affidavit of Indigency completed and executed by the appellee. Forms may be found in the Clerk's Office or on the Internet at <http://www.tex-app.org> and <http://www.hba.org/folder-sections/sec-appellate.htm>. Your participation in the Pro Bono Pilot Program may be conditioned upon your execution of an affidavit under oath as to your financial circumstances.

Yes  No

5. Give a brief description of the issues to be raised on appeal, the relief sought, and the applicable standard of review, if known (without prejudice to the right to raise additional issues or request additional relief; use a separate attachment, if necessary).

#### VI. Alternative Dispute Resolution/Mediation (if applicable)

Instructions: This information will be used in conjunction with the Rule 32.1 docketing statement to evaluate your case for possible referral to an alternative dispute resolution procedure. See TEX. R. APP. P. 32.1. The court will not consider your answers if the case is submitted on the merits. Each party (except where noted) must complete and file a completed docketing form in the Court of Appeals after the appeal is perfected.

Check Y for yes or N for no. Fill in all blanks or check appropriate boxes.

1. Should this case be referred to mediation? Yes  No  (use additional sheets if necessary)

If no, why?

(The court makes the final decision regarding referral of a case to mediation)

2. Has this case been through an ADR procedure in the trial court? Yes  No

If you answered yes:

a. Who was the mediator?

b. What type of ADR procedure?

c. At what stage did the case go through ADR?

pre-trial      trial      post-trial      other \_\_\_\_\_

3. Rate the case for complexity. Use 1 for the least complex and 5 for the most complex. Check one:

1  2  3  4  5

VII. Signature:

\_\_\_\_\_ Date: \_\_\_\_\_

Signature of counsel (or pro se party)

State Bar No.: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address:

Email Address:

Telephone Number:

Facsimile Number:

Representing: (Appellant/Appellee)

Abatement Order filed , 2011.



In The

**Fourteenth Court of Appeals**

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NO. 14-11-00-CV

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, Appellant

V.

, Appellee

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On Appeal from the Court  
Harris County, Texas  
Trial Court Cause No.

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**ABATEMENT ORDER**

We have determined that this case is appropriate for referral to mediation, an alternative dispute resolution process. *See* Tex. Civ. Prac. & Rem. Code §§ 154.021—.073. Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation or settlement. *Id.* § 154.023(a). Any communication relating to the subject matter of the appeal made by a participant in the mediation proceeding is confidential. *See* Tex. Civ. Prac. & Rem. Code § 154.053. After mediation, the parties shall advise the court whether the case settled, or whether any further negotiation efforts are planned.

The court **ORDERS** the appeal **ABATED** for a period of sixty days and refers the underlying dispute to mediation. Any party may file a written objection to this order with the clerk of this court within **10 days** of the date of this order. *See* Tex. Civ. Prac. & Rem. Code § 154.022. If this court finds that there is a reasonable basis for the objection, the objection shall be sustained and the appeal reinstated on this court's active docket. *See id.*

The court **ORDERS** that the mediation be held within **60 days** of the date of this order. The court **ORDERS** that all parties or their representatives with full settlement authority shall attend the mediation process, with their counsel of record. The court **FURTHER ORDERS** that within **48 hours** of completion of the mediation, the parties shall advise the court in writing whether the case settled.

If mediation fully resolves the issues in the case, the court **ORDERS** the parties to file a motion to dismiss the appeal, other dispositive motion, or a motion for additional time to file the dispositive motion, within **10 days** of the conclusion of the mediation.

The court **ORDERS** the appellate timetable in this case suspended for **60 days** from the date of this order.

The appeal is **ABATED**, treated as a closed case, and removed from this court's active docket for a period of sixty days. The appeal will be reinstated on this court's active docket after sixty days. Any party may file a motion stating grounds for reinstating the appeal before the end of the sixty-day period. Any party may also file a motion to dismiss the appeal or other dispositive motion at any time. Any party may file a motion to extend the abatement period for completion of mediation or to finalize a settlement.

PER CURIAM

Survey Response

**Utah**

**STATE APPELLATE MEDIATION PROGRAM SURVEY RESPONSE**  
**UTAH COURT OF APPEALS**  
**February 17, 2012**

1. Utah's appellate court mediation program was established in 1998 on a trial basis and a year later, became permanent.
2. At the request of the judges of the Utah Court of Appeals, Utah's Judicial Council approved the creation of the Appellate Mediation Office in 1997. The Utah Legislature approved the program in 1998, but did not fund it until 1999. Utah's appellate mediation program is governed by Utah Rule of Appellate Procedure 28A, which provides:

(a) *Appellate Mediation Office; purpose of mediation conference.*

The court may direct the attorneys for the parties and the parties to appear before a mediator appointed by the court for a mediation conference to explore the possibility of settlement and such other matters as may aid in the efficient management and disposition of the case.

(b) *Case referral.* When a case is referred to the Appellate Mediation Office, the clerk of the appellate court shall forthwith forward to the Appellate Mediation Office all filings in the case. The court will advise the parties by order that the case has been referred to the Appellate Mediation Office. All decisions regarding conduct of the mediation conference shall be within the sole discretion of the mediator appointed by the court.

(c) *Transmittal of record on appeal.* The record will be transmitted by the clerk of the trial court to the clerk of the appellate court upon request. Following the mediation conference, the record will be returned to the clerk of the trial court.

(d) *Participation of counsel and parties.* Upon receipt of the order referred to in section (b), participation by counsel and clients in the mediation process or related discussions shall be mandatory.

e) *Confidentiality*. Unless contained in a written settlement agreement as contemplated under section (i), statements and comments made during mediation conferences and in related discussions, and any record of those statements, are confidential and shall not be disclosed by anyone (including the appellate mediation office, counsel, or the parties; and their agents or employees) to anyone not participating in the mediation process. Proceedings under this rule may not be recorded by counsel or the parties. Pursuant to Utah Code Ann. § 78-2a-6 [now § 78A-4-106], the records of the Appellate Mediation Office are protected as defined by Utah Code Ann. § 63-2-304 [now § 63G-2-305] and may be disclosed only as provided by Utah Code Ann. § 63-2-202 [now § 63G-2-202]. Mediators shall not be called as witnesses, and the information and records of the Appellate Mediation Office shall not be disclosed to judges, staff, or employees of any court.

(f) *Continuances*. Mediation conferences will not be rescheduled or continued absent good cause as determined by the mediator appointed by the court.

(g) *Extensions/Tolling*. The time for filing briefs, motions for summary disposition or other appellate proceedings is not automatically tolled pending a mediation conference. In cases in which a mediation conference has been scheduled, counsel may seek an extension by motion or stipulation as provided in Rule 22, Utah Rules of Appellate Procedure.

(h) *Request for mediation conference by a party*. Counsel may request a mediation conference either by motion, letter or confidential request. The Chief Appellate Mediator shall determine whether a mediation conference will be conducted. The decision of the Chief Appellate Mediator is final and not subject to further review. If a mediation conference is scheduled, the mediation shall be conducted in accordance with the provisions in this rule.

(I) *Settlement/Termination*. In appeals settled in whole or in part pursuant to this rule, the court will enter an appropriate order upon written stipulation of all parties, or in the case of voluntary dismissal by the appellant pursuant to these rules,

and send notice of the order to the parties. In appeals not settled and terminated from mediation, the court shall enter an appropriate order and send notice of the order to the parties. A motion to enforce a settlement agreement will be considered only if the alleged agreement is in writing. The motion and related documents shall be filed under seal.

(j) *Sanctions.* The court may impose sanctions, including costs, fees or dismissal, for the failure of counsel or a party to comply with the provisions of this rule or with orders entered pursuant to this rule.

Utah R. App. P. 28A.

3. Almost all mediations are ordered by the court. However, pursuant to the governing appellate rule, parties and counsel may request a mediation with notice to opposing counsel or confidentially. *See* Utah R. App. P. 28A(h). Attorneys who have participated in the program sometimes request mediation in other cases.
4. The program began conducting mediations in January 1998.
5. In the last fiscal year, 7/1/2010 through 6/30/2011, there were 314 civil cases and 122 agency cases filed in the Utah Court of Appeals.
6. After a docketing statement is filed and typically before briefing is set, the Chief Appellate Mediator randomly selects cases for mediation. Cases are screened "out" more than screened "in." For example, if the case is brought by a pro se party and the docketing statement lacks clarity and direction, it will not be selected for mediation.
7. The Utah Appellate Mediation Office mediated 97 cases in the last fiscal year.
8. During the most recent fiscal year, 48 cases settled with the assistance of the Utah Appellate Mediation Office. All of those cases were resolved with full settlements. One of the cases started as a partial settlement, but a second mediation session resulted in a complete settlement.

9. A "partial settlement" is one where a settlement is achieved as to some, but not all parties. Sometimes a mediation results in the narrowing of issues, but the Utah Appellate Mediation Office does not categorize this as a "partial settlement."
10. Self-represented parties are not automatically excluded from the program, but there is a more thorough review to determine if selection of such a case will result in a productive use of the time of those involved in the mediation.
11. One on-staff Chief Appellate Mediator manages Utah's appellate mediation program and conducts all mediations.
12. The Chief Appellate Mediator must be an attorney with mediation training and knowledge of appellate law.
13. The on-staff Chief Appellate Mediator conducts all mediations.
14. The Utah Appellate Courts employ only one mediator and appellate mediations are conducted by that person. On some infrequent occasions, an attorney who is already serving as a neutral for the parties will assist the Chief Appellate Mediator informally.
15. The Chief Appellate Mediator employs a variety of mediation techniques that are tailored to the wide range of cases mediated. However, she generally does not use the directive approach.
16. The mediator, the court of appeals judges, and court administrators are involved in the direction and management of the program.
17. The annual cost of the program is approximately \$200,000.
18. A mediator and a part-time administrative assistant perform all operations of the program.
19. There is not a formal "opt out" option, although in some circumstances the mediator transfers the case back to the Utah Court of Appeals' regular calendar based on the input of the parties. If there is a dispute over whether "opting out" is appropriate, the judges may become involved. In any event, if the mediation

does not result in a settlement within six months after it is referred to mediation, the case must be reset for decision on the court's regular calendar.

20. The Court, not the Chief Appellate Mediator, may impose sanctions for failure to attend a scheduled mediation. Twice during the 14-year-history of the program the Utah Court of Appeals has issued an Order to Show Cause why sanctions should not be imposed for counsel's or the client's failure to appear for a court-mandated mediation. In one instance, the attorney who failed to appear without good cause was ordered to pay the fees of counsel for the other party, who had appeared at the scheduled mediation with his client. The Court of Appeals judges have indicated a commitment to support the authority of the Chief Appellate Mediator in the future as necessary.
21. The cases mediated during that last fiscal year by category are:

<u>Category</u>		<u>Percentage of All Cases Mediated</u>
General Civil 62	=	64%
Administrative/Agency 19	=	20%
Domestic 14	=	14%
Interlocutory 1	=	1%
Juvenile 1	=	1%

- 21(a). The cases settled during the last fiscal year by category are:

<u>Category</u>		<u>Percentage of All Cases Settled</u>
General Civil 31	=	65%
Administrative/Agency 9	=	19%
Domestic 7	=	15%
Interlocutory 0	=	0%
Juvenile 1	=	1%

22. All types of civil cases are eligible for mediation.

23. Minor adjustments have been made since its inception to improve the mediation program, but no major changes have been necessary. When the program was established, the Court of Appeals judges and the court staff invested significant time and effort to study other programs and to learn from their experience. In large part, the Utah Court of Appeals patterned its mediation program after the program instituted by the United States Court of Appeals for the 10th Circuit.
24. The most significant successes of the program are: 1) the positive relationships built with local attorneys and their clients; 2) the good will established with the public by providing this service at no charge; and 3) the satisfaction in settling cases that have remained in dispute until this late stage in the litigation process.
25. As is common in state courts generally, funding is a challenge. Due to budget cuts in 2011, the court reduced the program's administrative assistant from a full-time to a part-time position.
26. The program gives attorneys and parties a different forum in which to resolve their cases on appeal. The Chief Appellate Mediator reduces the number of cases that must be assigned to a panel of judges or assigned to the court's staff attorneys for review as possible summary dispositions or per curiam decisions. In some years, the Chief Appellate Mediator resolves as many cases through mediation as an individual judge on the Court of Appeals must author in a year, although not as many as that judge will decide in a year.<sup>1</sup> While the cases settled through mediation sometimes involve fewer and less complex issues than those that result in a published opinion, the reduction in the judges' caseloads is a benefit to the court. On some occasions the Chief Appellate Mediator's resolution of an appeal will include an agreement to dismiss related litigation pending in the trial courts, thereby reducing the caseload of those judges as well.
27. A copy of Rule 28A of the Utah Rules of Appellate Procedure, Appellate Mediation Office, is set forth in answer to Question 1, above.

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<sup>1</sup>For example, for the fiscal year July 1, 2010 through June 30, 2011, each judge on the Utah Court of Appeals rendered a decision in over 250 matters. This number includes all decisions that the judge participated in as a member of a three-judge panel, whether issued as an opinion, memorandum decision, or per curiam decision. Excluded from this number are the decisions that members of the court make on an individual basis due to their rotating authority as chairpersons of various panels.

28. When a mediation is terminated, either by settlement or impasse, the Appellate Mediation Office sends questionnaires to all counsel or to the party, if unrepresented. No information is currently available that summarizes these results, but the court intends to implement statistical controls and to collect this information in the future.

Mediation Program Name: Utah Appellate Mediation Program

Court: Utah Court of Appeals  
[In a few occasions the Appellate Mediation Office has mediated a case pending before the Utah Supreme Court.]

Court Case Jurisdiction: All cases pending before the appellate courts of Utah are within the jurisdiction of the Utah Appellate Mediation Program.

Court Geographic Jurisdiction: The State of Utah

Name of Mediation Program  
Director/Administrator: Michele Mattsson, Esq.  
Chief Appellate Mediator

Address: Appellate Mediation Office  
Matheson Courthouse  
450 S. State Street  
P.O. Box 140230  
Salt Lake City, Utah 84111-0230

Telephone: (801) 238-7805, main line  
(801) 238-7806, Chief Appellate Mediator,  
Michele Mattsson's direct line

Email--Chief  
Appellate Mediator: [michelem@email.utcourts.gov](mailto:michelem@email.utcourts.gov)

Website: <http://www.utcourts.gov/mediation/med-coa.html>

I hereby give permission to the Office of Mediation, Maryland Court of Special Appeals to use my survey response in a report created and distributed to appellate courts and other appellate mediation programs.

Date: February 17, 2012

Name: Carolyn B. McHugh  
Title: Presiding Judge, Utah Court of Appeals  
jmchugh@email.utcourts.gov  
(801) 578-3900

Signature: 