

## APPELLATE MEDIATION PROGRAM

### § 65.43 Policy

The Appellate Mediation Program facilitates settlements or otherwise assists in the resolution of eligible Civil, Family and Orphans' Court appeals. Attorneys with the requisite experience are appointed by the Court to administer the program and conduct mediations. The Mediator shall report directly to the President Judge or his or her designee.

- A. After an appeal is filed and contemporaneous with the issuance of docketing information, the Superior Court Prothonotary shall provide the Appellant with a Mediation Statement Form directing the Appellant to submit a factual and procedural summary of the case, the issues raised on appeal, a copy of any opinion or order entered in the lower court and such other information that might impact the mediation process.
- B. The completed Mediation Statement shall be confidential. It shall be delivered directly to the Mediator whose identity and address will be provided with the Appellate Mediation Statement Form. The Mediation Statement shall not be filed with the Prothonotary and shall not be served on opposing counsel.
- C. Based on the Mediation Statement and any other submitted documents, the Mediator, in his or her discretion, shall determine whether the case on appeal will be mediated. The Mediator shall notify the parties when a case is selected for mediation. Once the Mediator selects a matter for mediation, participation is mandatory.
  - A. In the event that a case has not been selected for mediation, a party or parties to such an appeal may request the Mediator to reconsider the case for mediation. The Mediator may, in his or her discretion, accept such reconsidered case for mediation, provided that no case shall be eligible for the mediation program after the filing of Appellant's brief and the Mediator shall not reconsider and accept a case after that time has passed.
- E. After selection of a case for mediation, and in order to facilitate the mediation, the Mediator shall distribute instructions, procedures and forms to the parties. The parties will prepare and timely submit to the Mediator all forms sent in conjunction with the mediation program.
- F. The Mediator shall schedule and conduct confidential mediation sessions. The mediation of selected cases shall be conducted in person, however, if necessary, the Mediator may permit the mediation to take place telephonically, or by videoconference if available. Such mediation sessions shall be scheduled and completed prior to the date set for the filing of Appellant's initial brief. A

briefing schedule shall not be deferred during the pendency of mediation unless the Court determines otherwise. A referral to mediation shall not defer or extend the time for ordering any necessary transcripts. Unless otherwise ordered by the Court and for good cause shown, the appellate process will not be interrupted as a result of the pendency of mediation.

- G. Unless the Mediator directs otherwise, mediation sessions must be attended by: 1) for each party, the lead attorney who is responsible for the appeal; 2) the parties to the appeal; and 3) if other than or in addition to a party, by the person or persons with actual, full and complete authority to agree to the terms of a settlement of the case. Attendance by other persons who may beneficially influence a settlement shall be within the discretion of the Mediator.
- H. No party shall be bound by statements or actions at a mediation session unless a settlement is reached. If the case settles, the agreement shall be reduced to writing and signed by all parties at the mediation session or as soon as possible thereafter. A settlement agreement shall be binding upon all parties to the agreement.
- I. In the event of settlement, the Appellant shall promptly file with the Prothonotary a Praecipe for Discontinuance of the appeal pursuant to Pa.R.A.P.1973 and serve a copy of the Praecipe on the trial judge who presided in the case in the Court of Common Pleas pursuant to Pa.R.A.P. 121(c). The Praecipe shall contain a Notice of Service of the trial court judge pursuant to Pa.R.A.P. 121(d).
- J. The Mediator shall keep confidential any statements made or information developed during the mediation process. The parties, their attorneys and other persons attending the mediation are likewise prohibited from disclosing statements made or information developed during the mediation process to anyone other than clients, principals, co-counsel, or those whose final permission and authority is essential to effectuate a settlement, and then, only upon receiving confirmation that the recipients will honor the confidentiality of the information. Similarly, the parties are prohibited from using any confidential information obtained as a result of the mediation process as a basis for any motion or argument to any court.
- K. The Mediator shall not participate in any attempts to enforce a settlement. Further, the Mediator cannot be called as a witness in any action or proceeding to enforce a settlement reached as a result of the Appellate Mediation Program.
- L. All mediation communications and mediation documents are confidential, inadmissible and are privileged communications pursuant to 42 Pa.C.S.A. § 5949. Upon completion of the mediation proceedings, the Mediator will destroy, in a secure manner, all written documentation submitted during the

consideration of and/or conduct of mediation.

- M. The Mediator will provide a program evaluation form, to counsel for the parties and, if appropriate, to parties. Candid evaluations are encouraged, but are voluntary and may be submitted anonymously.

Adopted September 15, 2010, imd. effective.