

**Introduction
to
Arkansas Voluntary Appellate Mediation Pilot Program**

Q. What is the purpose of the Appellate Mediation Program?

A. To attempt to resolve appeals amicably and early in the appellate process, and thereby save the parties time, expense, and uncertainty.

Q. What cases are eligible for mediation?

A. All final civil appeals (including Domestic Relations, Probate, and Workers' Compensation law cases, but excluding juvenile and public service commission cases) filed in the Arkansas Court of Appeals, if all parties are represented by counsel, are eligible for mediation.

Q. How will cases be selected for mediation?

A. If a case meets the threshold requirements for mediation (final civil appeals with counsel on all sides), and all parties agree to participate, then the parties will need to file a joint motion to stay proceedings with the court having jurisdiction over the appeal. [Prior to record on appeal being filed - Circuit Court ----- After record on appeal filed - Court of Appeals]

A copy of the Order Granting Stay, together with a Mediation Case Screening Form from Appellant and any Cross-Appellant, will need to be forwarded by mail or fax to the Mediation Coordinator who will then do a notice of referral and assign a mediator.

Q. How will the mediators be selected?

A. The pilot program coordinator has an approved roster of mediators, consisting of mediators certified by the Arkansas Dispute Resolution Commission as either circuit civil mediators, family mediators, or dependency mediators who also have experience in appellate practice and who have taken specialized appellate mediation training. The mediation coordinator will assign a mediator from that roster. The coordinator will appoint an available mediator timely agreed to by the parties or, if no agreement, select an available mediator from the roster. The coordinator will consider, among other things, the type of case, geographical location of the parties and qualifications of each available appellate mediator.

Q. How will the mediation be conducted?

A. The mediator shall coordinate the time, place, and procedures for the mediation, including the filing of any mediation summaries.

Q. How will mediation affect the appellate time frames?

A. The parties must file a joint motion for stay with the court having jurisdiction over the appeal. Upon the issuance of the stay all appellate deadlines, with the exception of the seven month

deadline,¹ will be tolled for 60 days from the date of the Order Granting Stay or until the mediation is completed and an Order Lifting Stay is entered, whichever occurs first, unless there is an approved extension of time for special circumstances.

Q. What will be the cost of mediation?

A. To the extent resources are available the mediator appointed by the Mediation Coordinator will be paid by the pilot program at a rate of \$225 per hour. A maximum of 8 hours per mediation shall be paid by the pilot program.

Q. What if mediation is not successful?

A. If mediation is unsuccessful, the appeal will proceed in the usual fashion. The court shall not be informed of any of the discussions which occurred in mediation (all such conversations being confidential and privileged), but only that the mediation was unsuccessful.

Q. What happens if mediation is successful?

A. Upon successful completion of a mediation, the court having jurisdiction will dispose of the case as appropriate in that particular case. Disposition of the case might involve dismissal of the appeal, remand to the trial court for approval of a settlement agreement which requires court approval, or entry of a stipulated order called for by the mediation agreement.

Q. Who do I call if I have questions about the mediation program?

A. The mediation coordinator, Jennifer Taylor, can be reached at (501) 682-9400, E-mail jennifer.taylor@arkansas.gov, Fax (501) 682-9410 Also the *Arkansas Voluntary Appellate Mediation Pilot Program Rules* are available for viewing at <http://www.courts.state.us.ar/adr>.

¹ THE STAY DOES NOT CHANGE THE FINAL SEVEN MONTH DEADLINE SET BY ARKANSAS RULE OF APPELLATE PROCEDURE - CIVIL 5(b) TO FILE THE RECORD ON APPEAL.

ARKANSAS VOLUNTARY APPELLATE MEDIATION PILOT PROGRAM

RULE 1. OVERVIEW AND SCOPE OF APPELLATE MEDIATION PILOT PROGRAM

(a) Scope. The voluntary appellate mediation pilot program, established in the Arkansas Court of Appeals pursuant to Per Curiam Opinion of the Arkansas Supreme Court, provides an alternative means for resolving appeals in civil cases (including Domestic Relations, Probate and Workers' Compensation law cases, but excluding juvenile and public service commission cases) . The program is coordinated by and operates under the direct supervision of an appellate mediation coordinator. The appellate mediation coordinators office shall be located in the Alternative Dispute Resolution Commission office at the Justice Building, 625 Marshall St., Little Rock, Arkansas, 72201.

(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.

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 reporter's transcript prepared and of filing briefs.

RULE 2. SCREENING FOR MEDIATION

(a) Content of Forms. 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 pilot program are to maintain status and statistics, assign an appropriate mediator 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 (including Domestic Relations, Probate and Workers' Compensation law cases, but excluding juvenile and public service commission cases) within the jurisdiction of the Arkansas Court of Appeals, where the appeal is from a final order and all parties are represented by counsel, shall be eligible for participation in the appellate mediation pilot program.

(1) *Mediation Case-Screening.* When Appellant and Appellee agree to participate in the Appellate Mediation Pilot Program Appellant and any Cross-Appellant shall file a Mediation Case-Screening Form ([Form 2](#)) with the appellate mediation office together with a copy of the Order Granting Stay (See sample [Form 3A](#)). The purpose of the Mediation Case-Screening Form is to assist the mediation coordinator in selecting an appropriate mediator and to provide basic background information to the mediator in advance of the mediation. The appellant shall attach to their Mediation Case Screening Form the following: (1) a copy of the notice of appeal; (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 post judgment motion, if applicable; and (5) a copy of the post judgment motion and all the parties briefs on it if it will assist the coordinator in determining the nature of the dispute. The mediation coordinator will forward copies of all these documents to the assigned mediator. Within three days of filing the case screening forms the parties may agree to use a specific available appellate mediator. The parties shall be responsible for contacting the mediation coordinator to obtain the roster of appellate mediators and for contacting the agreed to roster mediator regarding accepting the appointment. The mediation coordinator should be promptly advised, within the three day period, as to any agreement concerning the appellate mediator. If the parties do not select an agreed upon mediator within the three day period the mediation coordinator shall make the selection in accordance with Rule 3 (a)(1).

(c) Notice to Court Reporter of Stay of Proceedings on Appeal. When all parties agree to participate in the pilot program the appellant and cross-appellant, if any, must complete the Mediation Screening Form and provide the coordinator with that Form and a copy of the Order Granting Stay. The appellant should also notify the court reporter of the Order Granting Stay regarding the record preparation and provide the court reporter with instructions as to how the court reporter should proceed. (See sample [Form 4](#) and Rule 2(d) below)

The appellate process, including the times for preparing and filing the clerk's record, the reporter's transcript and for briefing, will be stayed in accordance with the terms of the Order Granting Stay. If the mediation reaches only a partial resolution or impasse, the case shall be reinstated to the appellate docket and an Order Lifting Stay entered, if necessary.

(d) Matters Not Stayed. The time for filing of a cross-appeal or any appeal related to a case in which the appellate process has been stayed is not stayed. THE STAY DOES NOT CHANGE THE FINAL SEVEN MONTH DEADLINE SET BY ARKANSAS RULE OF APPELLATE PROCEDURE - CIVIL 5(b) TO FILE THE RECORD ON APPEAL.

RULE 3. REFERRAL TO MEDIATION

(a) Referral to Mediation and Appointment of Mediator. Selection of cases for mediation is based on the parties self referral or upon invitation from the mediation coordinator

. (1) *Notice of Referral to Mediation and Notice of Appointing Mediator.* This Notice ([Form 5](#)) notifies the parties that the case shall be mediated and appoints a mediator. In appointing a mediator the mediation coordinator shall give preference to an available mediator selected by the parties. However, if the parties are unable to agree upon a mediator within the 3 days provided for in Rule 2(b)(1) the mediation coordinator shall select a mediator from the roster and may, among other things, consider the experience of the mediator with the subject matter of case being mediated, available mediators and the geographical location of the mediator.

(b) 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 pilot program at any time during the appellate process for the coordinator to inquire as to the parties willingness to participate in this voluntary appellate mediation pilot program.

(c) Mediation Time Frame. Upon issuance of the Order Granting Stay, the parties and the mediator shall have 60 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 7](#)) and evaluations ([Form 8](#), [Form 9](#), and [Form 10](#)).

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 Background Form ([Form 1](#)) to the appellate mediation office and meet the following criteria.

(1) *Appellate Mediator Roster.* For this pilot program the appellate mediation office shall establish and maintain a roster of approved appellate mediators. An approved appellate mediator is someone who has been selected by the mediation coordinator, approved by the Alternative Dispute Resolution Commission, and who meets the following minimum requirements:

- A. The mediator is certified and in good standing with the Arkansas Alternative Dispute Resolution Commission, 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 a Background Form ([Form 1](#)) to serve as mediator for the appellate mediation program;
 2. Has successfully completed, or will complete prior to performing an appellate mediation, a six-hour appellate mediation training course approved by the appellate mediation office;
 3. Has appellate experience;
 4. Has agreed to adhere to the Arkansas Alternative Dispute Resolution Commission Requirements for the Conduct of Mediation and Mediators;
 5. Has agreed to be bound by these Rules of Appellate Mediation; and
 6. Has agreed to waive any and all claims against the Alternative Dispute Resolution Commission in connection with his or her mediation of any referred mediation.

(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 Arkansas Alternative Dispute Resolution Commission Requirements for the Conduct of Mediation and Mediators.

(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 3 days of this notice the appellate mediation coordinator shall appoint a successor 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 Arkansas Alternative Dispute Resolution Commission Requirements for the Conduct of Mediation and Mediators.

(f) Fees and Expenses. To the extent resources are available the Appellate Mediation Pilot Program will pay the fees and expenses (including preparation time but excluding travel time) of the mediator at a rate of \$225 per hour. A maximum of 8 hours per mediation shall be paid by the pilot program. Should this time be exceeded, or should resources become unavailable, the parties shall have the option of continuing in the pilot program and sharing the expense of the mediator fees equally, unless otherwise agreed in any mediation agreement.

(g) Disqualification of an Appellate Mediator. An appellate mediator may be disqualified from mediating appellate cases for:

- (1) Violating these Mediation Rules, or the Arkansas Alternative Dispute Resolution Commission Requirements for the Conduct of Mediation and Mediators;
- (2) Failure to remain in good standing and abide by the standards of practice established by the Arkansas Center for Dispute Resolution, or
- (3) At the discretion of the mediation coordinator or the Alternative Dispute Resolution Commission.

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 60-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 60 days allowed by these Rules for mediation. If the mediation is not completed within 60 days of the Order Granting Stay, 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 during the mediation.

(e) Extensions. A mediator may request that the parties seek an extension of time beyond the 60-day period allowed by Rule 3(c) 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 parties within the time allowed for mediation. The mediator must send a confirmation letter to all counsel, copied to the appellate mediation office. That letter should read as follows:

"Re: [Appeal number and style]. This confirms that I have requested that the parties extend the time to mediate this appeal from the current due date of [date] to the new due date of [date]."

Please obtain an appropriate extension of time from the court having jurisdiction if you both agree to mediate further."

(f) Attendance at Mediation Session. Mediation by telephone conferencing may be used if permitted by the mediator. Permission shall be sought in writing, explaining all reasons for the request, with copy to all opposing counsels. 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 the carrier's outside counsel and who has full authority to settle. Insurance representatives attending the mediation shall be permitted to consult telephonically with their superiors during the mediation for additional settlement authority.

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.

A party, or the party's counsel refusal to attend a mediation session or sessions, who unreasonably delays the scheduling of mediation, or who otherwise unreasonably impedes the conduct of the program, may be grounds for the mediator to declare an impasse. (See subsection (i) of this Rule.)

(g) Submission of Mediation Statement and Documents. The mediator may require the parties to prepare and submit a detailed Confidential Mediation Statement. This statement is not a brief. If a Mediation Statement is required by the mediator, the Mediation Statement shall 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. Offers and demands from previous mediations shall not be revealed in this confidential statement;
- (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;

The mediation statement may also include:

- (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 .) Copies of the Mediation Statements submitted by the parties should go directly to the mediator and should not be served upon opposing counsel or the Mediation Coordinator. Documents prepared for mediation sessions are not to be filed with the Mediation Coordinator or the clerk's office of any 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 shall be conducted in accordance with the requirements for the conduct of mediation and mediators set forth by the Arkansas Alternative Dispute Resolution Commission. 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., reversal, vacatur, remand, remittitur 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 mediation.

(i) Sanctions. Neither the appellate mediation office nor the appellate mediation coordinator 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 mediator may declare an impasse.

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.

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 7](#)). All appellate time requirements shall resume upon the expiration of the time allowed for in the Order Granting Stay or from the date of any Order Lifting Stay, whichever occurs first.

(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 that fact in the Mediator's Report and attach a copy of the agreement, unless the parties have negotiated a confidentiality provision.

A. In those cases where a partial agreement is reached, the case may proceed on the appellate docket for appellate determination of the remaining issues. All appellate time requirements shall resume upon the expiration of the time

allowed for in the Order Granting Stay or from the date of any Order Lifting Stay, whichever occurs first.

B. Where the mediation results in resolution of the appeal, dismissal of the appeal will be governed the Arkansas Rules of Appellate Procedure.

(b) Evaluations. At the conclusion of all mediations, the mediator shall distribute evaluations to the counsel and parties of record inviting their candid responses about the effectiveness of the appellate mediation pilot program in assisting the parties to resolve their issues on appeal.

The mediator shall distribute evaluations ([Form 8](#), [Form 9](#), and [Form 10](#)) 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 - preferably immediately following the conclusion of the mediation. If completed at the conclusion of the mediation the evaluations can be given in a sealed envelope to the mediator. If the parties complete the forms after leaving the mediation they shall mail them directly to the Mediation Coordinator within 7 days. The mediator shall complete the Mediator's Report to the appellate mediation office within seven days of completion of mediation and return any forms completed by the parties at the time of mediation.

RULE 7. POST-SETTLEMENT DISMISSAL PROCEDURES

(a) Joint Stipulation for Dismissal of Case After Mediation ([Form 12](#)). If the parties reach an agreement as a result of the mediation, they shall file a joint (or agreed) motion to dismiss the case in the clerk's office of the court having jurisdiction. A copy of the order to dismiss the case shall be served on the Mediation Coordinator and 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.

The parties, if necessary, may seek to extend the mediation time. (See [Forms 11](#))

(b) Termination of Mediation and Notice to Reinstate Appeal (Sample [Form 6](#)). 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 may be reinstated on the appellate docket and the stay of proceedings may be lifted.
- (2) ALL APPELLATE TIME REQUIREMENTS SHALL RESUME UPON THE EXPIRATION OR LIFTING OF THE STAY. 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 Stay expiring or being lifted.

THE STAY DOES NOT CHANGE THE FINAL SEVEN MONTH DEADLINE SET BY ARKANSAS RULE OF APPELLATE PROCEDURE - CIVIL 5(b) TO FILE THE

RECORD ON APPEAL.

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 Arkansas Rules of Appellate Procedure.

There shall be no reference, whatsoever, in any appellate motions, briefs, or oral argument to the Court 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; (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 shall strictly enforce this Rule.

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 coordinator. The complaints or concerns shall not be confidential and the mediation coordinator is authorized to forward complaints or concerns to the Alternative Dispute Resolution Commission

for disciplinary action. Questions and complaints shall not be addressed to the Supreme Court of Arkansas, the Arkansas Court of 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 Arkansas Alternative Dispute Resolution Commission Requirements for the Conduct of Mediation and Mediators shall be applicable to the extent not inconsistent herewith.

Amended August 2008

(Form 1)

**Arkansas Appellate Mediation Pilot Program
Mediator Background**

PLEASE PRINT OR TYPE

Name:

Firm or Agency:

Street or P.O. Box:

City/State/Zip:

Phone #:

Fax #:

E-mail:

1. List the types of mediation training you have had and all mediation certifications, together with the year you received the certifications.

2. List any relevant professional licenses, certifications or memberships currently held, together with the license or certification number and year issued.

3. Check your areas of substantive expertise:

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

Other (specify):

4. What is your standard hourly fee for mediation?

5. Briefly describe your actual mediation experience and your appellate experience.

6. Have you mediated an appellate case? If yes, please briefly state when, where, and the type of case mediated.

7. 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 Arkansas Appellate Mediation Rules.

I agree to adhere to the Arkansas Alternative Dispute Resolution Requirements for the Conduct of Mediation and Mediators.

I agree to waive any and all claims against the Alternative Dispute Resolution Commission in connection with my mediation of any court-referred dispute.

Signature:

Date: _____

Mail this form to:

Appellate Mediation Office
Alternative Dispute Resolution Commission
Justice Building
625 Marshall St.
Little Rock, Arkansas, 72201

Form 2

OFFICE OF THE MEDIATION COORDINATOR

[DATE]

[CASE # AND STYLE]

APPELLATE/CROSS APPELLANT MEDIATION CASE-SCREENING FORM

This screening form is sent to obtain information to be used by the appellate mediation coordinator in assigning the appellate mediator. Appellant, and any Cross-Appellant, must file the completed Mediation Case-Screening Form with the Appellate Mediation Office, Alternative Dispute Resolution Commission, Justice Building, 625 Marshall St., Little Rock, Arkansas, 72201, with a copy of the Order Granting Stay. The appellant shall attach to the form (1) a copy of the notice of appeal, (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 post judgment motion, if applicable; and (5) a copy of the post judgment motion if it will assist the coordinator to determine the nature of the dispute. **FAILURE TO RETURN THE MEDIATION CASE-SCREENING FORM MAY RESULT IN THE CASE BEING REJECTED FOR PARTICIPATION IN THE APPELLATE MEDIATION PILOT PROGRAM**

Appellant's or Cross-Appellant's attorney name and Arkansas Bar No. (Lead counsel: If different from the attorney listed on the notice of appeal.)

Address, City, State, Zip:

Phone:

Fax:

E-mail:

Appellee's attorney name and Arkansas Bar No. (Lead counsel: If different from the attorney listed on the notice of appeal.)

Address, City, State, Zip:

Phone:

Fax:

E-mail:

TYPE OF CASE: (for example, personal injury, products liability, probate, business/contract, worker's compensation, employment/labor, administrative agencies, domestic relations, corporate, construction, insurance, landlord/tenant, medical malpractice, professional negligence, wrongful death, real estate, health care, etc)

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

Describe each expected issue on appeal as now known and the standard which will be applicable to each issue (completion of the questionnaire will not limit which issues may be raised in 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 _____

THE APPELLANT IS TO ATTACH A COPY OF THE NOTICE OF APPEAL, 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 POST JUDGMENT MOTION, IF APPLICABLE, AND A COPY OF THE POST JUDGMENT MOTION AND ALL PARTIES BRIEFS ON IT IF IT WILL ASSIST THE COORDINATOR TO DETERMINE THE NATURE OF THE DISPUTE.

Date

Signature

Print Name

Lead counsel for: _____

NOTE: This form is to be filed with the Appellate Mediation Office, Alternative Dispute Resolution Commission, Justice Building, 625 Marshall St., Little Rock, Arkansas, 72201, Little Rock, Arkansas, together with a copy of the Order Granting Stay. A copy must be provided to appellee counsel.

(Form 4)

[DATE]

[CASE # AND STYLE]

**NOTICE TO CLERK AND COURT REPORTER OF ORDER GRANTING STAY OF
PROCEEDINGS ON APPEAL**

This is to notify you that this appeal is participating in appellate mediation under the Arkansas Appellate Mediation Pilot Program. Preparation of the record and/or transcript is stayed per the attached Order Granting Stay or pending further order of the Court. Please do not commence or continue work on the transcript without specific instructions from the undersigned.

Counsel for Appellant

**cc: Counsel for Appellee
Court Reporter**

Form 5

OFFICE OF THE APPELLATE MEDIATION COORDINATOR

[Date]

[CASE # AND STYLE]

NOTICE OF REFERRAL TO MEDIATION AND APPOINTMENT OF MEDIATOR

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

1. The following mediator is assigned to mediate the above referenced case:

(Mediator name):

(Mediator address):

(telephone):

(fax)

2. The assigned mediator and the parties shall schedule the mediation so that it concludes prior to 60 days of the date of Order Granting Stay as provided in Rule 3(d), Arkansas Rules of Appellate Mediation.

3. The parties shall submit Mediation Statements if the mediator so requests. Any Mediation Statements should be short and concise (preferably not more than five (5) pages in length). Parties with full settlement authority and counsel are required to attend mediation sessions. 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, the case may be returned to the appellate docket as a result of those actions

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:

a. The party or its representative having full authority to settle without further

consultation; and

b. The party's counsel of record, if any; and

c. 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. However, insurance representatives attending the mediation shall be permitted to consult telephonically with their superiors during the mediation for additional settlement authority.

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.

5. All appellate mediation sessions shall be confidential as provided in Rule 8 of the Arkansas Appellate Mediation Rules, and the mediation will be conducted in accordance with the Arkansas Appellate Mediation Rules, and the Arkansas Alternative Dispute Resolution Requirements for the Conduct of Mediation and Mediators.

6. The appellate process, including the times for preparing and transmitting the record transcript and filing briefs in this case have already been stayed per Order Granting Stay issued by the court having jurisdiction. THE TIME FOR FILING ANY CROSS APPEAL OR RELATED APPEAL IS NOT STAYED.

7. THE MEDIATION SHALL BE COMPLETED WITHIN 60 DAYS FROM THE DATE OF ORDER GRANTING STAY OR ANY EXTENSION THERETO.

Appellate Mediation Coordinator

Date

cc: Counsel for Appellant
Counsel for Appellee
Mediator - with copy of Order Granting Stay and Appellant's Case Screening Form, with attachments

Form 12
[court having jurisdiction]

[CASE # AND STYLE]

JOINT MOTION FOR DISMISSAL OF APPEAL AFTER MEDIATION

Appellant(s), (please list all appellants)

_____,
and appellee(s), (please list all appellees)

_____, **move jointly to dismiss the appeal in this case** for the following reasons:

Dated this _____ day of _____, 200__ .

Counsel for appellant

Counsel for appellee

cc: Appellate Mediation Office & Mediator

Form 6

[court having jurisdiction]

[CASE # AND STYLE]

ORDER LIFTING STAY AND REINSTATING APPEAL

This appeal is hereby reinstated. The stay of the appellate proceedings is lifted. All appellate time requirements shall resume. The stay has been in effect for ___ days. The time for filing the record is extended by ___ days, which is within the seven month deadline set by Ark. R. App. P. -- Civil 5 (b)(3). All the deadlines for filing the record on appeal prescribed by the Arkansas Rules of Appellate Procedure - Civil are now in force.

The appellant shall make satisfactory arrangements with the trial court clerk and the court reporter for timely 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 _____, 200_____.

[court having jurisdiction]

cc: Counsel
Clerk
Court reporter

**Form 7
IN THE OFFICE OF THE MEDIATION COORDINATOR**

[CASE # AND STYLE]

MEDIATION REPORT

A mediation was held on _____, 200____, and the results of that mediation are indicated below.

1. (a) The following individuals, parties, corporate representatives, and/or claims professionals attended and participated in the mediation conference:

- All individual parties and their respective appellate counsel
- Designated corporate representatives
- Required claims professionals

(b) The following individuals, parties, corporate representatives, and/or claims professionals failed to appear.

2. The mediation was concluded with the following result:

(a) A settlement agreement executed by all parties and counsel subject to and conditioned on the following action by the Court of Appeal:

- Dismissal of Appeal
- Relinquish Jurisdiction to Circuit Court for the following specific purpose:
- Other Action as follows:

CHECK ONE:

- The mediator is holding in escrow an executed joint stipulation for dismissal in the form attached hereto, which shall be filed upon completion of settlement terms; or
- Executed Joint Stipulation for Dismissal is attached

- (b) A stipulation limiting the issues for determination by the Court Of Appeals to the following:
 - (i) Direct appeal:
 - (ii) Cross appeal:
 - (iii) Settle other issues/cases not here involved:
- (c) An impasse as to all issues.

3. The total time devoted to the mediation by the mediator was ____ hours.

4. Completed Mediation Evaluation by Mediator is attached hereto.

Mediation Evaluations were furnished to the parties and attorneys to complete and return to the Mediation Coordinator.

DONE this day of , 200 , in , Arkansas.

Signature of Mediator

(Name)

(Address)

(City/State/Zip)

(Telephone)

(E-Mail)

(Fax)

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

by delivery mail fax on this day of , 200 .

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, Alternative Dispute Resolution Commission, Justice Building, 625 Marshall St., Little Rock, Arkansas, 72201

Form 8
IN THE ARKANSAS COURT OF APPEALS

[CASE # AND STYLE]

MEDIATION EVALUATION

For Mediators Only

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

1. WHAT KIND OF PROBLEM OR CASE WAS MEDIATED?

(please select one)

- | | |
|---|---|
| <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) | |

2. WAS THE APPEAL FROM A:

- | | |
|---|---|
| <input type="checkbox"/> Summary Judgment | <input type="checkbox"/> Final Judgment after jury trial |
| <input type="checkbox"/> Final Judgment after non-jury trial | <input type="checkbox"/> Other Final appealable order |

3. WAS THE PROBLEM OR CASE RESOLVED THROUGH MEDIATION AT THE APPELLATE LEVEL?

- Yes, completely No, made no progress Made situation worse

- Partially resolved (some issues stipulated to or resolved)

- Issues or disputes directly involved in this appeal partially resolved

- Issues or dispute not directly involved in this appeal resolved or partially resolved

- Somewhat helpful in clarifying and simplifying issues for appeal

- Other (please describe)

4. ARE ATTEMPTS TO SETTLE THE APPEAL STILL ONGOING?

- 5. DID MEDIATION: TAKE PLACE ON MORE THAN ONE (1) DAY? Yes No**
TAKE PLACE ON THE ORIGINAL DATE SCHEDULED Yes No

- 6. IN WHAT CITY DID THE MEDIATION TAKE PLACE? _____**
HOW MUCH TIME WAS SPENT ON: TRAVEL TO AND FROM MEDIATION _____
PREPARATION, INCLUDING READING ANY CONFIDENTIAL STATEMENT _____

7. PLEASE SUGGEST HOW YOU THINK WE CAN IMPROVE THE APPELLATE MEDIATION PROGRAM.

Date _____ Signature _____

Mediator's Name:

The Mediator should file this report with:

**Mediation Coordinator
Arkansas Alternative Dispute Resolution Office
Justice Building
625 Marshall St.
Little Rock, AR, 72201**

Form 9
IN THE OFFICE OF THE MEDIATION COORDINATOR

[CASE # AND STYLE]

MEDIATION EVALUATION

For Attorneys Only

Please take a few minutes to complete this form and return it to mediator in a sealed envelope.

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

1. WHAT KIND OF PROBLEM OR CASE WAS MEDIATED?

(please select one)

- | | |
|--|--|
| <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) | |

2. WAS THE APPEAL FROM A:

- | | |
|--|--|
| <input type="checkbox"/> Summary Judgment | <input type="checkbox"/> Final Judgment after jury trial |
| <input type="checkbox"/> Final Judgment after non-jury trial | <input type="checkbox"/> Other Final appealable order |

3. **WAS THE PROBLEM OR CASE RESOLVED THROUGH MEDIATION AT THE APPELLATE LEVEL?**

- Yes, completely No, made no progress Made situation worse

- Partially resolved (some issues stipulated to or resolved)

- Issues or disputes directly involved in this appeal partially resolved

- Issues or dispute not directly involved in this appeal resolved or partially resolved

- Somewhat helpful in clarifying and simplifying issues for appeal

- Other (please describe)

4. **HOW MUCH TIME DID YOU SPEND PREPARING FOR AND ATTENDING THE MEDIATION PROCESS?**

5. **ARE ATTEMPTS TO SETTLE THE APPEAL STILL ONGOING?**

6. **IF THE CASE WAS RESOLVED OR PARTIALLY SO, PLEASE ESTIMATE THE AMOUNT OF COSTS AND FEES SAVED BY YOUR CLIENT:**

Costs of appeal \$

Attorney's fees \$

7. **THE SERVICE PROVIDED BY THE MEDIATOR (Name):**

- Helped a great deal Made no difference
- Helped some Made thing worse

8. **WOULD YOU RECOMMEND APPELLATE MEDIATION?** Yes No

Please explain (optional)

9. **HOW MANY MEDIATIONS HAVE YOU PARTICIPATED IN PREVIOUSLY?** _____

10. **PLEASE SUGGEST HOW YOU THINK WE CAN IMPROVE THE APPELLATE MEDIATION PROGRAM.**

Date _____ **Signature** _____

Attorney's Name:

Attorney for [Appellant or Appellee]

Form 10
IN THE OFFICE OF THE MEDIATION COORDINATOR

[CASE # AND STYLE]

MEDIATION EVALUATION

For Parties Only

Please take a few minutes to complete this form and return it to the mediator in a sealed envelope

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

1. WHAT KIND OF PROBLEM OR CASE WAS MEDIATED?

(please select one)

- | | |
|---|---|
| <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) | |

2. WAS THE APPEAL FROM A:

- | | |
|---|---|
| <input type="checkbox"/> Summary Judgment | <input type="checkbox"/> Final Judgment after jury trial |
| <input type="checkbox"/> Final Judgment after non-jury trial | <input type="checkbox"/> Other Final appealable order |

3. WAS THE PROBLEM OR CASE RESOLVED THROUGH MEDIATION AT THE APPELLATE LEVEL?

- Yes, completely No, made no progress Made situation worse
- Partially resolved (some issues stipulated to or resolved)
- Issues or disputes directly involved in this appeal partially resolved
- Issues or dispute not directly involved in this appeal resolved or partially resolved
- Somewhat helpful in clarifying and simplifying issues for appeal
- Other (please describe)

4. ARE ATTEMPTS TO SETTLE THE APPEAL STILL ONGOING?

5. THE SERVICE PROVIDED BY THE MEDIATOR (Name):

- Helped a great deal Made no difference
- Helped some Made thing worse

6. WOULD YOU RECOMMEND APPELLATE MEDIATION? Yes No

Please explain (optional)

7. PLEASE SUGGEST HOW YOU THINK WE CAN IMPROVE THE APPELLATE MEDIATION PROGRAM.

Date _____ Signature _____

Name:

Form 3

[court having jurisdiction]

[CASE # AND STYLE]

JOINT MOTION FOR STAY

The undersigned counsel for all parties jointly move, by agreement and pursuant to Rule 3 of the Arkansas Voluntary Appellate Mediation Pilot Program, for the entry of an order granting a stay of appellate proceedings for 60 days to permit the parties to participate in the voluntary appellate mediation pilot program. The parties are aware that the time for filing any cross appeal or related appeal will not be stayed. THE STAY DOES NOT CHANGE THE FINAL SEVEN MONTH DEADLINE SET BY ARKANSAS RULE OF APPELLATE PROCEDURE - CIVIL 5(b) TO FILE THE RECORD ON APPEAL.

DATED this day of , 200 .

Attorney for Appellant(s)

Attorney for Appellee(s)

(Name)

(Name)

(Address)

(Address)

(City/State/Zip)

(City/State/Zip)

[court having jurisdiction]

[CASE # AND STYLE]

AGREED ORDER GRANTING STAY

The appellate process, including the times for preparing and filing the clerk's record, the reporter's transcript or for briefing, shall be stayed for sixty (60) days from the date of this order unless extended longer or lifted earlier by further order of this court. The time for filing any notice of cross appeal or related appeal is not stayed per Rule 2(d) of the Voluntary Appellate Mediation Pilot Program Rules. THE STAY DOES NOT CHANGE THE FINAL SEVEN MONTH DEADLINE SET BY ARKANSAS RULE OF APPELLATE PROCEDURE - CIVIL 5(b) TO FILE THE RECORD ON APPEAL. This stay is to permit time for the parties to participate in the Voluntary Appellate Mediation Pilot Program . The appellant shall notify the trial court clerk and the court reporter concerning this stay.

DATED this _____ day of _____, 200_____.

[judge of court having jurisdiction]

cc: Counsel