

Policies for the Arizona Appellate Settlement Conference Program, Arizona Court of Appeals, Division Two¹

(a) Goals. The Arizona Appellate Settlement Conference Program (Program) is established to provide an alternative means for resolving certain civil appeals and to enhance public confidence in the appellate court system. The Program is intended to provide parties to an appeal a procedure to realistically explore settlement of the entire case or issues in the case; limit and simplify issues on appeal; and aid the speedy and just resolution of the appeal. The Program shall be provided at no additional court cost to the parties beyond the normal appellate filing fees.

(b) Definitions. (1) *Court.* "Court" means the Arizona Court of Appeals, Division Two.
(2) *Appellate Mediator.* "Appellate Mediator" means a retired or active appellate judge.
(3) *Settlement Conference Attorney.* "Settlement Conference Attorney" means an employee of the Court designated by the Chief Judge to assist the Court in implementing the Program.

(c) Applicability. All appeals filed in the Arizona Court of Appeals are eligible for the Program except: criminal appeals; appeals involving habeas corpus petitions; appeals in which a party is incarcerated; appeals from juvenile court; appeals from the Arizona Department of Economic Security Appeals Board; direct appeals from the Corporation Commission; special actions; and, any other appeal that the Court determines to be inappropriate for the Program.

(d) Order of Assignment. Except as provided in paragraph (f) of this rule, the Court shall select those cases for assignment to the Program which it deems most likely to benefit from alternative dispute resolution. Within seven days after the appellant has filed the Notice of Appeal, the Court may enter an order notifying the parties to a selected case that the case has been assigned to the Program. The order shall stay the normal appellate briefing schedule pending completion of the settlement process, and shall also stay ordering certified transcripts, filing any notice of cross-appeal, and the transmittal of the index of record on appeal. The assignment order shall also notify the appellant that the filing fee shall be paid within ten days.

(e) Objection to Assignment. A party may object to assignment to the Program 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. To ensure confidentiality, the party shall send the objection in an envelope marked "confidential" to the Settlement Conference Attorney. The Settlement Conference Attorney shall not disclose the contents of the objection to an opposing party without the consent of the objecting party. The Court, in its discretion, shall enter an order vacating the conference, continuing the conference or denying the objection.

(f) Mandatory Participation. Participation is mandatory for all parties to appeals assigned to the Program unless the Court grants an objection to assignment as provided in paragraph (e).

(g) Settlement Statement. Upon appellant's payment of the filing fee, the Court shall notify the parties of the date of the settlement conference, instruct the parties to submit within ten calendar days a confidential settlement statement in a form prescribed by the Court and give notice that appellee's filing fee shall be paid within the same period. If the tenth day falls on a weekend or holiday, the statement is due on the following business day. To ensure confidentiality, the parties shall send their statements in an envelope marked "confidential" to the Appellate Mediator in care of the Settlement Conference Attorney. The statements shall not

¹ See Ariz. R. Civ. App. P. 30.

be filed with the Court, shall be confidential, shall not be placed in the appellate case file, and shall not be served upon opposing parties. In no event shall the Appellate Mediator or the Settlement Conference Attorney disclose the statement or its contents to opposing parties without the consent of the party submitting the statement.

(h) Selection of Appellate Mediator. Upon assignment of a case to the Program, the Settlement Conference Attorney shall select an Appellate Mediator. The parties will not be charged for the services of the Appellate Mediator.

(i) Authority of Appellate Mediator. The role of the Appellate Mediator is to facilitate the voluntary resolution of cases by assisting the parties and their counsel to come to an agreement. The Appellate Mediator shall have no duty to make a recommendation for settlement of the appeal. The Settlement Conference Attorney is authorized to order conferences and request the parties to provide the Appellate Mediator with additional information. The Appellate Mediator has the authority to terminate the settlement process if the Appellate Mediator believes the process is unproductive or that any party is not proceeding in good faith.

(j) Orders. After the initial conference, the Settlement Conference Attorney shall either enter an order setting another settlement conference in accordance with these policies, or enter a disposition order as provided in paragraph (l)(5).

(k) Termination of Stay. Unless earlier terminated, all stays issued as part of the Program shall automatically terminate upon entry of an order returning the case to the appellate docket. Upon entry of the order returning the case to the appellate docket, the parties shall resume the normal appellate process.

(l) Settlement Conference.

(1) *Scheduling of the Conference.* The Court shall schedule a conference to be held within thirty days after the due date for submitting settlement statements.

(2) *Location of the Conference.* Unless otherwise ordered by the Court, all conferences shall be held in Tucson at Division Two of the Arizona Court of Appeals.

(3) *Attendance at the Conference.* The parties and their attorneys shall attend the settlement conference in person unless the Court finds good cause to permit a party to participate by telephone. In the case of a corporation, partnership, association, governmental body or other organization, both a representative having settlement authority for that party and the party's attorney shall attend. In the case of an official named as a nominal party, the Court shall ordinarily exempt such party from attendance.

(4) *Nature of the Conference.* The conference shall be an informal confidential meeting presided over by the Appellate Mediator. The Appellate Mediator shall have discretion to set the agenda and sequence of presentations and may deliver an agenda to the parties in advance of the conference. The discussions at the settlement conference shall not be recorded.

(5) *Disposition Order.* Upon completion of the settlement process, the Court shall either enter an order dismissing the appeal, returning the case to the normal appellate process, or enter an order indicating that the parties will file a stipulated motion to dismiss within a specified number of days from the date of the order. If the stipulation is not timely filed, the Court will return the case to the normal appellate process.

(m) Confidentiality.

(1) *Communication between the Court, the Appellate Mediator and the Parties.* The parties to a case selected for the Program, the Appellate Mediator and any court employee who becomes

involved in the Program in a particular case shall not communicate to anyone any matters or information discussed or learned either during the conference or from the settlement statements except to the extent required by law or compelled by process. Such information shall be confidential, not discoverable and shall be inadmissible in evidence in any judicial proceedings.

(2) *Documents.* Documents prepared by the parties and received by the Appellate Mediator or the Settlement Conference Attorney as part of the Program shall not be filed as part of the appellate case file with the Court, shall not be served upon opposing parties and shall not be disclosed to any person or party without the consent of the party who prepared the documents. Upon termination of the settlement process, the documents shall either be returned to the parties or destroyed by the Court. These documents shall not be discoverable and shall be inadmissible in evidence in any judicial proceedings.

(n) Immunity. Appellate Mediators, the Settlement Conference Attorney and all other Court employees involved in the Program shall be absolutely immune from suit for all conduct in the course of their official duties.

(o) Disqualification of Appellate Mediator or Settlement Conference Attorney. Any person who participates as an Appellate Mediator or Settlement Conference Attorney shall not thereafter participate in any way in the consideration or disposition of the appeal on its merits.

(p) Time. In computing any period of time related to the Program or any order entered pursuant to the Program, the provisions of Rule 6(a), Ariz. R. Civ. P., or Rule 4(A), Ariz. Rules Fam. L. Proc., shall apply unless Rule 30, Ariz. R. Civ. App. P., or an order expressly states otherwise.