

Case Mediation Participant Information

Updated February 9, 2010

About Mediation Conferences

The Court schedules mediation conferences in selected cases. Experienced mediation attorneys conduct the mediation conferences. The goal of mediation is to offer participants a confidential, risk-free opportunity to evaluate their case candidly with an experienced mediator to explore the possibility of resolving any disputed issues.

Case Selection

The Court selects cases for mediation conferences from cases originating in courts of appeals, mandatory appeals from administrative agencies, original actions, and other non-felony cases that the Court deems appropriate. The Court attempts to select cases for mediation that do not raise novel legal questions.

Referrals

The Supreme Court may, sua sponte or on motion by a party, refer to its mediator for mediation any case that originated in the court of appeals, any appeal from an administrative agency, any original action, or pursuant to S.Ct. Prac. R. 2.6 any civil case that the Supreme Court deems appropriate. The mediator may conduct mediation conferences at which the parties shall explore settling the case, simplifying the issues, and expediting the procedure, and may consider any other matter that might aid in resolving the case. Unless otherwise provided by Court order, referral of a case for mediation does not alter the filing deadlines prescribed by Court rules. See S.Ct. Prac. R. 17.1. Referral of Cases for Mediation.

Mediation Conference Scheduling and Format

The Court attempts to schedule all mediation conferences, by written notice from the Court, three to four weeks in advance of the mediation conference date. The Court expects all parties and their representatives to attend their mediation conference.

Initial mediation conferences typically last one to two hours, but sometimes may last longer. In some cases, parties generate proposals that require further review and, if this happens, further discussions may occur. The mediator may schedule follow-up telephone or in-person mediation conferences, with or without clients, as necessary, to pursue fully all opportunities for negotiated settlements.

Requests for Continuances

Provided the party has not previously obtained a continuance from the Case Mediation Section for the aforementioned case, a request for a continuance of the mediation conference must be submitted in writing stating good cause for a continuance at least two weeks prior to the mediation conference. The request may be faxed to the Case Mediation Section at 614.387.9359 or mailed to: Case Mediation Section, 65 South Front Street, 6th Floor, Columbus, Ohio 43215.

Briefing

The Court may suspend the briefing schedule until the parties complete negotiations, and the parties should review the Court's entry referring the case to mediation for any orders related to the due dates for briefs. The mediator has the authority to return cases to the regular docket and terminate stays if the parties are not making progress in resolving their case. Entries lifting stays, including entries returning cases to the regular docket, will set forth when briefs will be due. If no stay of the briefing schedule is in effect, or if a stay has been lifted, parties must file briefs and other documents when such filings are due, and the Court will dismiss cases for want of prosecution or take other action if the parties do not file briefs timely. See S.Ct. Prac. R. 6.7, S.Ct. Prac. R. 14.3(B) and 17.1(D) address extending the date for filing briefs.

Statements

Any party seeking a monetary settlement shall prepare a statement setting forth the amount of the demand and a detailed explanation for it. Such party shall submit this statement to the opposing parties and to the mediator ten days prior to the scheduled mediation. This statement will not be filed in the case.

Parties may submit to the mediator a confidential statement analyzing the settlement potential of the case. The mediation counsel will not disclose this statement to the other parties, unless the submitting party consents to disclosure. This statement will not be filed in the case.

Attendance

If a case is referred for mediation, each party to the case, or the representative of each party who has full settlement authority, and the attorney for each party shall attend the mediation conferences, unless excused by the mediator. If a party or its representative is excused from a mediation conference, the party or its representative must provide its attorney authority beyond initial mediation positions, and the party or its representative must be available for consultation during the course of the mediation.

If a party or an attorney fails to attend the mediation conference without being excused, the Supreme Court may assess the party or the attorney reasonable expenses caused by the failure, including reasonable attorney fees or all or a part of the expenses of the other party. The Supreme Court may also dismiss the action, strike documents filed by the offending party, or impose any other appropriate penalty.

Sometimes the parties cannot resolve the case without the involvement of individuals or groups who are not parties to the appeal. In that event, the Court may invite those additional persons or

groups to participate. Even so, any mediated agreement affecting the interests of any party will take effect only with the voluntary consent of all parties.

What Participants Can Expect

There are different styles of mediation such as transformative, facilitative, and evaluative mediation. The Court utilizes the facilitative style of mediation where the mediator guides the parties through a party self-determination process to see if a mutually acceptable agreement may be reached to resolve the foreclosure. In the session, the mediator is a neutral third party; not an advocate for either party.

Mediation conferences are relatively informal. They are, however, official proceedings of the Court. Most mediation conferences begin with an inquiry into the circumstances that led to the filing of the case, and all parties are given an opportunity to state their views of the case. This discussion allows the mediator and the parties to understand the issues. The mediator will then ask the parties to suggest and evaluate options to resolve the case. Often, a candid examination of the probabilities for various possible outcomes helps parties reach consensus in settling the case.

The mediator will inquire about settlement, and will help the parties discover common interests if they are not immediately evident. The mediator will not evaluate the case and provide a recommendation. However, the mediator will make every effort to generate offers and counter-offers until the parties either settle the case or know they cannot settle it, and by how much they cannot settle it.

What the Court Expects

The Court expects parties to come to the table with an open mind and demonstrate respect for all participants throughout the mediation process.

The Court attempts to identify lead counsel for all parties when scheduling mediation conferences. If the Court misidentifies lead counsel, addressees should advise the Court of this mistake in advance of the mediation conference. **Lead counsel should also prepare their clients to speak for themselves at the mediation conference.**

In most cases, parties move from prior settlement positions more than they expect, requiring further consultation with clients. Thus, counsel should bring clients or the individual with full settlement authority to the mediation conference. If the client is a public board or commission that will need to approve any settlement before implementation, the Court expects counsel to have received firm settlement positions, beyond an initial position, from such board or commission.

The mediator and the parties expend considerable time and effort in preparing for and participating in these mediation conferences. Attitudes and perceptions of participants frequently change in the process. Experience shows that this time and effort is wasted, and opportunities for settlement can be lost, when clients or the individual with full settlement authority do not attend the mediation conference.

Confidentiality

The definitions contained in section 2710.01 of the Revised Code apply to Supreme Court mediation. The privileges contained in section 2710.03 of the Revised Code and the exceptions contained in section 2710.05 of the Revised Code apply to mediation communications. The privileges may be waived under section 2710.04 of the Revised Code. Mediation communications are confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to disclosure. The Supreme Court may impose penalties for any improper disclosures made in violation of this rule. See S.Ct. Prac. R. 17.2. Privileges and Confidentiality.