

Case Mediation Participant Information

About Mediation Conferences

The Supreme Court of Ohio schedules mediation conferences in selected cases. These conferences are conducted by experienced mediation attorneys. Mediation offers participants a confidential, risk-free opportunity to candidly evaluate their case with an experienced mediator to explore the possibility of resolving any disputed issues.

Case Selection

The Court selects cases from:

- Cases originating in courts of appeals
- Mandatory appeals from administrative agencies
- Original actions
- Other non-felony cases deemed appropriate

The Court attempts to select cases for mediation that do not raise novel legal questions.

Referrals

The Supreme Court may, *sua sponte* refer a case to mediation. Except in a criminal appeal or a case related to the practice of law, a party may file a motion to refer a case to mediation pursuant to S.Ct. Prac. R. 4.02. The mediator may conduct mediation conferences at which the parties 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 stays all filing deadlines in a case until further notice.** (See S.Ct. Prac. R. 19.01. *Referral of Cases for Mediation*).

Conference Scheduling and Format

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

Initial mediation conferences typically last one to two hours, but some may last longer. In some cases, parties generate proposals that require further review, resulting in additional discussions. 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 Court's Dispute Resolution 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 submitted to the Dispute Resolution Section using one of the following methods:

Email: DisputeResolution@sc.ohio.gov

Fax: 614.387.9409

Mail: Dispute Resolution Section
65 South Front Street, 6th Floor
Columbus, Ohio 43215

Briefing

Unless otherwise provided by court order, referral of a case for mediation stays all filing deadlines in a case until further notice. The mediator has authority to return cases to the regular docket and terminate stays if the parties aren't making progress toward a resolution. Entries lifting stays, including entries returning cases to the regular docket, set forth when briefs are due. If a stay is lifted, parties must file briefs and other documents when such filings are due. 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. 3.02, 3.03, 16.02, 16.03, 16.07 and 19.01(D) *address extending the date for filing briefs*).

Statements

Parties seeking a monetary settlement must prepare a statement setting forth the amount and detailed explanation of the demand. The statement must be submitted to the opposing parties and to the mediator 10 days before 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 mediator 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, or the party representative who has full settlement authority, and the attorney for each party must attend mediation conferences, unless excused by the mediator. If a party or party representative is excused, the party or representative must provide its attorney authority beyond initial mediation positions, and the party or 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 parties cannot resolve the case without the involvement of individuals or groups who are not parties to the appeal. In this event, the mediator may invite the additional individuals 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

The Court uses the facilitative style of mediation, where the mediator guides parties through a self-determination process to see if a mutually acceptable agreement may be reached to resolve the case. In the session, the mediator serves as 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. All parties are given an opportunity to state their views. This discussion allows the mediator and the parties to understand the interests. 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. The mediator will, however make every effort to generate offers and counter-offers until the parties either settle the case or know they cannot settle it, why, and by how much they cannot settle it.

Once the Court has been notified that the parties have reached a settlement, an Entry returning the case to the regular docket will be filed. Within 60 days of the date of the Entry the appellant shall either file an application for dismissal or file a merit brief in accordance with the Supreme Court Rules of Practice.

What the Court Expects

The Court expects parties to come to mediation 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 lead counsel is misidentified, addressees should advise the Court of the mistake in advance of the mediation conference. Lead counsel should also prepare 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 needs to approve a settlement before implementation, the Court expects counsel to have received firm settlement positions, beyond an initial position, from the board or commission.

The mediator and the parties expend considerable time and effort 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.

The Court expects that within 60 days of the date a case has settled in mediation, an application for dismissal will be filed.

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 mediation 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. 19.02. Privileges and Confidentiality*).