

1 **Rule 28A. Appellate Mediation Office**

2 (a) Appellate Mediation Office; Purpose of Mediation Conference. The court may direct the
3 attorneys for the parties and the parties to appear before a mediator appointed by the court for a
4 mediation conference to explore the possibility of settlement and such other matters as may aid in
5 the efficient management and disposition of the case.

6 (b) Case referral. When a case is referred to the Appellate Mediation Office, the clerk of the
7 appellate court shall forthwith forward to the Appellate Mediation Office all filings in the case.
8 The court will advise the parties by order that the case has been referred to the Appellate
9 Mediation Office. All decisions regarding conduct of the mediation conference shall be within
10 the sole discretion of the mediator appointed by the court.

11 (c) Transmittal of record on appeal. The record will be transmitted by the clerk of the trial
12 court to the clerk of the appellate court upon request. Following the mediation conference, the
13 record will be returned to the clerk of the trial court.

14 (d) Participation of Counsel and Parties. Upon receipt of the order referred to in section (b),
15 participation by counsel and clients in the initial mediation conference process or related
16 discussions shall be mandatory. ~~Participation by parties shall be as directed by the mediator~~
17 ~~appointed by the court. Prior to the mediation conference, counsel shall consult with their clients~~
18 ~~and obtain as much authority as feasible to settle the case.~~

19 (e) Confidentiality. Unless contained in a written settlement agreement as contemplated
20 under section (i), § statements and comments made during mediation conferences and in related
21 discussions, and any record of those statements, are confidential and shall not be disclosed to any
22 court in argument, briefs, or otherwise by staff or mediators of the Appellate Mediation Office,
23 counsel, the parties, or other participants in the mediation conference by anyone (including the
24 appellate mediation office, counsel, or the parties; and their agents or employees) to anyone not
25 participating in the mediation process. Proceedings under this rule may not be recorded by
26 counsel or the parties. Pursuant to Utah Code Ann. § 78-2a-6, the records of the Appellate
27 Mediation Office are protected as defined by Utah Code Ann. § 63-2-304 and may be disclosed
28 only as provided by Utah Code Ann. § 63-2-202. Mediators shall not be called as witnesses, and
29 the information and records of the Appellate Mediation Office shall not be disclosed to judges,

30 staff, or employees of any court.

31 (f) Continuances. Mediation conferences will not be rescheduled or continued absent good
32 cause as determined by the mediator appointed by the court.

33 (g) Extensions/Tolling. The time for filing briefs, motions for summary disposition or other
34 appellate proceedings is not automatically tolled pending a mediation conference. In cases in
35 which a mediation conference has been scheduled, counsel may seek an extension by motion or
36 stipulation as provided in Rule 22, Utah Rules of Appellate Procedure.

37 (h) Request for Mediation Conference by a Party. Counsel may request a mediation
38 conference either by motion, letter or confidential request. The Chief Appellate Mediator shall
39 determine whether a mediation conference will be conducted. The decision of the Chief
40 Appellate Mediator is final and not subject to further review. If a mediation conference is
41 scheduled, the mediation shall be conducted in accordance with the provisions in this rule.

42 (i) Settlement/Termination. In appeals settled in whole or in part pursuant to this rule, the
43 court will enter an appropriate order upon written stipulation of all parties, or in the case of
44 voluntary dismissal by the appellant pursuant to these rules, and send notice of the order to the
45 parties. In appeals not settled and terminated from mediation, the court shall enter an appropriate
46 order and send notice of the order to the parties. A motion to enforce a settlement agreement will
47 be considered only if the alleged agreement is in writing. The motion and related documents
48 shall be filed under seal.

49 (j) Sanctions. The court may impose sanctions, including costs, fees or dismissal, for the
50 failure of counsel or a party to comply with the provisions of this rule or with orders entered
51 pursuant to this rule.

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