

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 any~~ other matters ~~as that~~ may aid
5 in 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.~~ The court
8 will advise the parties by order that the case has been referred to the Appellate Mediation Office. All
9 decisions regarding conduct of the mediation conference ~~shall be~~ are within the sole discretion of the
10 mediator ~~appointed by the court.~~

11 ~~(c) Transmittal of record on appeal.~~ The record will be transmitted by the clerk of the trial court to
12 the clerk of the appellate court upon request. Following the mediation conference, the record will be
13 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 mediation process or related discussions ~~shall be mandatory.~~

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

25 ~~(f)(c) Continuances.~~ Mediation conferences will not be rescheduled or continued absent good cause
26 as determined by the mediator ~~appointed by the court.~~

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

31 ~~(h)(e) Request for Mediation Conference by a Party.~~

32 (e)(1) For cases pending in the Supreme Court, the parties may request a mediation conference
33 by stipulated motion filed with the Court. The Court will determine whether the case will be referred to
34 mediation. If a mediation conference is ordered, the mediation will be conducted in accordance with
35 this rule.

36 ~~(e)(2) Counsel~~ For cases pending in the Court of Appeals, the parties may request a mediation
37 conference either by motion, letter, or confidential request. The Chief Appellate Mediator shall will

38 determine whether a mediation conference will be conducted. The decision of the Chief Appellate
39 Mediator is final and not subject to ~~further~~ review. If a mediation conference is ~~scheduled~~ ordered, the
40 mediation ~~shall~~ will be conducted in accordance with ~~the provisions in~~ this rule.

41 (e)(3) The denial of a mediation request will not prevent the parties from engaging in private
42 settlement negotiations or private mediation.

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

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

51 **Advisory Committee Note**

52 2016 Amendments

53 Although former paragraph (d), requiring the participation of parties and counsel when mediation is
54 ordered, has been repealed, parties and counsel will still be required to participate under the court order.

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