

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

2 (a) **Appellate Mediation Office; Purpose of Mediation Conference.** The court may ~~direct~~
3 order the attorneys for the parties and the parties to appear before a mediator appointed by the
4 court for a mediation conference to explore the possibility of settlement and any other matters
5 that may aid in the efficient management and disposition of the case. The court will advise the
6 parties by order that the case has been referred to the Appellate Mediation Office. All decisions
7 regarding conduct of the mediation conference are within the sole discretion of the mediator.

8 (b) **Confidentiality.** Unless contained in a written settlement agreement under paragraph (f),
9 statements and comments made during mediation conferences and in related discussions, and any
10 record of those statements, are confidential and may not be disclosed by anyone (including the
11 appellate mediation office, counsel, or the parties; and their agents or employees) to anyone not
12 participating in the mediation process. Proceedings under this rule may not be recorded by
13 counsel or the parties. Mediators ~~shall~~may not be called as witnesses, and the information and
14 records of the Appellate Mediation Office ~~shall~~may not be disclosed to judges, staff, or
15 employees of any court.

16 (c) **Continuances.** Mediation conferences will not be rescheduled or continued absent good
17 cause as determined by the mediator.

18 (d) **Extensions/Tolling.** The time for filing briefs or motions for summary disposition and for
19 other appellate proceedings is not automatically tolled pending a mediation conference. The
20 parties may seek an extension by motion or stipulation as provided in Rule 22.

21 (e) **Request for Mediation Conference by a Party.**

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

26 (e)(2) For cases pending in the Court of Appeals, the parties may request a mediation
27 conference by motion, letter, or confidential request. The Chief Appellate Mediator will
28 determine whether a mediation conference will be conducted. The decision of the Chief

29 Appellate Mediator is final and not subject to review. If a mediation conference is
30 ordered, the mediation will be conducted in accordance with this rule.

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

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

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

43 **Advisory Committee Note**

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