

FILED
JUL 23 1997
NOEL K. DESSAINT
CLERK SUPREME COURT
BY [initials]

SUPREME COURT OF ARIZONA

In the Matter of:)
)
ADOPTION OF INTERIM RULES FOR THE)
ARIZONA APPELLATE SETTLEMENT)
CONFERENCE PILOT PROJECT)
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)
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)
_____)

ADMINISTRATIVE ORDER
NO. 97-38

Pursuant to Article 6, §§ 3 and 5 of the Arizona Constitution, it is

ORDERED adopting the attached interim Rules for the Arizona Appellate Settlement Conference Pilot Program effective this date until the court has adopted the final Rules for the Arizona Appellate Settlement Conference Program.

Dated this 23rd day of July, 1997.

THOMAS A. ZLAKET, Chief Justice


**RULES FOR THE ARIZONA APPELLATE
SETTLEMENT CONFERENCE PROGRAM**

RULE 1. GOALS AND DEFINITIONS.

(A) **Goals.** The Arizona Appellate Settlement Conference Program (Program) is established to provide an alternative means for resolving certain civil appeals and to enhance public confidence in the appellate court system. The Program is intended to provide parties to an appeal a forum and process to (1) realistically explore settlement of the entire case or issues in the case, (2) limit and simplify issues on appeal, and (3) aid the speedy and just resolution of the appeal. Upon adoption by a division of the Arizona Court of Appeals, the Program shall be provided at no additional court costs to the parties beyond the normal appellate filing fees.

(B) **Definitions.**

(1) **Court.** "Court" means the Arizona Court of Appeals.

(2) **Appellate Mediator.** "Appellate mediator" means a retired or active appellate judge or superior court judge or active member of the Arizona State Bar who has agreed to serve as an appellate mediator for the Program. The Court shall maintain a list of appellate mediators who shall be approved by and serve at the pleasure of the Chief Judge of the Court and the Arizona Supreme Court. Judges who serve as appellate mediators may do so without violating the Rules of Judicial Conduct.

(3) Settlement Conference Attorney. "Settlement conference attorney" means an employee of the Court designated by the Chief Judge of the Court in implementing the Program.

RULE 2. APPEALS TO WHICH THE PROGRAM APPLIES.

All appeals filed in the Arizona Court of Appeals are eligible for the Program except: (1) criminal appeals; (2) appeals involving habeas corpus petitions; (3) appeals in which a party is incarcerated; (4) appeals from juvenile court; (5) unemployment board appeals; (6) direct appeals from the corporation commission; (7) workers' compensation appeals; and (8) special actions.

RULE 3. PARTICIPATION IN THE PROGRAM.

(A) Order of Assignment. Except as provided in part (C) of this rule, the Court shall select eligible cases for assignment to the Program. Within three days after payment or waiver of appellant's filing fee, the Court shall enter an order notifying the parties to a selected case that the case has been assigned to the Program. The order shall instruct the parties to submit their Rule 4 settlement statements to the appellate mediator in care of the settlement conference attorney at the Court. The order shall stay the normal appellate briefing schedule pending completion of the settlement process. The order shall not stay payment of fees, posting bonds or filing notices of cross-appeals or civil appeals docketing statements.

(B) Objection to Assignment. A party may object to assignment to a settlement conference by submitting a written objection no later than five calendar days after the date of the

order of assignment. The objection shall not be filed in the Court, shall be confidential, shall not be placed in the Court's case file, and need not be served upon opposing counsel. To ensure confidentiality, the party shall send the objection in an envelope marked "confidential" to the settlement conference attorney. The settlement conference attorney shall not disclose the contents of the objection to an opposing party without the consent of the objecting party. Upon submitting the objection, the party shall also file a notice of filing objection to settlement conference in the Court. The settlement conference attorney will present the objection with a recommendation for disposition to the Chief Judge or the Chief Judge's designee. The Court, in its discretion, shall enter an order vacating the conference, continuing the conference or denying the objection.

(C) Motion for Participation. Before the opening brief is filed, any party who has either paid an appellate filing fee or obtained a fee waiver for a Program-eligible case may submit a written request to the settlement conference attorney for assignment to the Program. The request shall indicate the reasons the case should be assigned to the Program and attach a copy of the civil appeals docketing statement. If appellee is the requesting party and appellant has not yet filed a civil appeals docketing statement, appellee shall complete the civil appeals docketing statement form and attach it to the request. Requests shall remain confidential and the requesting party need not serve the request upon the opposing parties. If the requesting party desires a stay

of the appellate process pending completion of the settlement process, the request shall describe the status of the appellate process and what aspect of the process is sought to be stayed.

Within three days of receipt of a request for assignment to the Program, the Court shall grant or deny the request. If the request is denied, the settlement conference attorney shall provide written notification of that denial to the requesting party. If the request is granted, the Court shall enter an order notifying all parties that the case has been assigned to the Program. The order shall instruct the parties to submit their Rule 4 settlement statements to the appellate mediator in care of the settlement conference attorney at the Court. The order may indicate that all or part of the appellate process is stayed pending completion of the settlement process. Notwithstanding the foregoing, the order shall not stay payment of fees, posting bonds, filing notices of cross-appeals or civil appeals docketing statements or preparation of the index to the record on appeal.

(D) Mandatory Participation. Participation is mandatory for all parties to appeals assigned to the Program unless the Court grants an objection to assignment as provided in Rule 3(b).

RULE 4. SETTLEMENT STATEMENT.

The order of assignment shall instruct the parties to submit a confidential settlement statement in a form prescribed by the Court within ten calendar days from the date of the order of assignment. If the tenth day falls on a weekend or holiday, the statement is due on the following business day. To ensure

confidentiality, the parties shall send their statements in an envelope marked "confidential" to the appellate mediator in care of the settlement conference attorney. The statements shall not be filed with the Court, shall be confidential, shall not be placed in the Court's case file, and need not be served upon opposing parties. In no event shall the appellate mediator or the settlement conference attorney disclose the statement or its contents to opposing parties without the consent of the party submitting the statement. Upon submission of the settlement statements to the appellate mediator, the parties shall file a notice of filing settlement statement with the Court.

RULE 5. SELECTION OF APPELLATE MEDIATOR.

Upon assignment of a case to the Program, the settlement conference attorney shall select a appellate mediator on a rotating basis from the list of appellate mediators maintained by the Court. The parties will not be charged for the services of the appellate mediators.

RULE 6. THE APPELLATE MEDIATOR'S AUTHORITY.

(A) Appellate Mediator's Role and Authority. The role of the appellate mediator is to facilitate the voluntary resolution of cases by assisting the parties and their counsel to come to an agreement. The appellate mediator shall have no duty to make a recommendation for settlement of the appeal. The appellate mediator is authorized to order conferences and request the parties to provide the appellate mediator with additional information. The appellate mediator has the authority to terminate the settlement

process if the appellate mediator believes the process is unproductive or that any party is not proceeding in good faith.

(B) Orders. After the initial conference, the appellate mediator shall either enter an order setting another settlement conference in accordance with these rules, or enter a disposition order as provided in Rule 7(f).

(C) Termination of Stay. Unless earlier terminated, all stays issued as part of the Program shall automatically terminate upon entry of an order returning the case to the appellate docket. Upon entry of the order returning the case to the appellate docket, the parties shall resume the normal appellate process.

RULE 7. THE SETTLEMENT CONFERENCE.

(A) Scheduling of the Conference. The Court shall schedule a conference to be held within fifteen days after the due date for submitting settlement statements.

(B) Location of the Conference. Unless otherwise ordered by the Court, all conferences shall be held at the Arizona Court of Appeals.

(C) Attendance at the Conference. The parties in addition to their attorneys shall attend the settlement conference in person unless the Court finds good cause to permit a party to participate by telephone. The attorney with the most direct relationship with the client for the purpose of settlement shall attend the settlement conference.

(D) Nature of the Conference. The conference shall be an informal confidential meeting presided over by the appellate

mediator. The appellate mediator shall have discretion to set the agenda and sequence of presentations and may deliver an agenda to the parties in advance of the conference. The discussions at the settlement conference shall not be recorded.

(E) Completion of the Conference. The settlement process shall be completed within three calendar days of the initial conference unless the appellate mediator extends the deadline for completion of the settlement process for a maximum period of seven additional calendar days.

(F) Disposition Order. Upon completion of the settlement process, the appellate mediator shall either enter an order returning the case to the normal appellate process or enter an order indicating that the parties will file a stipulated motion to dismiss within ten days of the date of the order. If the stipulation is not timely filed, the court will return the case to the normal appellate process.

RULE 8. CONFIDENTIALITY.

(A) Communication Between the Court, the Appellate Mediator and the Parties. The parties to a case selected for the Program, the appellate mediator and any court employee who becomes involved in the Program in a particular case shall not communicate to anyone any matters or information discussed at or learned either during the conference or from the settlement statements. Such information shall be confidential, not discoverable and shall be inadmissible in evidence in any judicial proceedings.

(B) Documents. Documents prepared by the parties and received by the appellate mediator or the settlement conference attorney as part of the Program shall not be filed as part of the appellate case file with the Court, shall not be served upon opposing parties and shall not be disclosed to any person or party without the consent of the party who prepared the documents. Upon termination of the settlement process, the settlement conference attorney and the appellate mediator shall destroy the documents in their case files except for the final settlement report. These documents and the final settlement report shall not be discoverable and shall be inadmissible in evidence in any judicial proceedings.

(C) Notwithstanding the provisions of Rule 8 (a) and (b), if the appellate mediator becomes aware that a lawyer has violated the Rules of Professional Conduct raising a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, the appellate mediator may disclose documents and discussions relevant to that violation to the appropriate professional authority.

RULE 9. IMMUNITY.

Appellate mediators, the settlement conference attorney and all other court employees involved in the Program shall be absolutely immune from suit for all conduct in the course of their official duties.

RULE 10. DISQUALIFICATION OF APPELLATE MEDIATOR.

Any person who participates as a settlement conference judge shall not thereafter participate in any way in the consideration or disposition of the appeal on its merits.

RULE 11. FINAL SETTLEMENT REPORT.

Upon completion of the settlement process, the settlement conference attorney shall prepare a final report approved by the appellate mediator to explain why the settlement process succeeded or did not succeed in that case. The final report shall be confidential and neither the appellate mediator nor the settlement conference attorney shall disclose to or discuss with any third person the contents of such final report. The final report shall be retained in a confidential file separate from the appellate case file and may be used to compile information concerning the success of the Program provided that any statistic or report on the Program shall not identify particular cases, parties or attorneys.

RULE 12. TIME.

In computing any period of time prescribed by these rules or by order entered pursuant to these rules, the provisions of Ariz. R. Civ. P. (6)(a) shall apply, unless the rule or an order expressly states otherwise.