

FILED
AUG 21 1998
NOEL K. DESSAINT
CLERK SUPREME COURT
BY

SUPREME COURT OF ARIZONA

In the Matter of:

AMENDMENT OF RULE 30(d) and (h),)
ARIZONA RULES OF CIVIL APPELLATE)
PROCEDURE, TO BE APPLICABLE IN) ADMINISTRATIVE ORDER
DIVISION II OF THE COURT OF APPEALS) No. 98-45
ON AN EXPERIMENTAL BASIS)
_____)

IT IS ORDERED amending Rule 30(d) and (h), Rules of Civil Appellate Procedure, to read as set forth in Exhibit A hereto,* and to be applicable to Division Two of the Court of Appeals on an experimental basis, effective September 1, 1998 to June 30, 1999. A complete copy of Rule 30, Rules of Civil Appellate Procedure, as amended by this order is attached as Exhibit B hereto.

DATED this 21st day ~~of~~ August, 1998.

THOMAS A. ZLAKET, Chief Justice

* Changes or additions in text are indicated by underlining and deletions from text are indicated by ~~strikeouts~~.

RULE 30(d), RULES OF CIVIL APPELLATE PROCEDURE

Except as provided in paragraph (f) of this rule, ~~Division Two of the Court of Appeals the Court~~ shall select those cases for assignment to the Program which ~~Division Two the Court, following a review of the appellate record,~~ deems most likely to benefit from alternative dispute resolution. Within three days after ~~either payment of appellant's filing fee or order waiving, deferring or acknowledging that the appellant is exempt from paying a filing fee, has filed the Notice of Appeal, Division Two the Court~~ shall may 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 paragraph (h) 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 may also stay payment of fees, posting bonds for costs on appeal or, filing notices of cross-appals or civil appeals docketing statements, ordering transcripts from court reporters, or transmitting indexes of records on appeal.~~ The assignment order shall also notify the appellant that the filing fee shall be paid within ten days.

RULE 30(h), RULES OF CIVIL APPELLATE PROCEDURE

Upon appellant's payment of the filing fee, Division Two ~~The order of assignment~~ shall instruct the parties to submit within ten calendar days a confidential settlement statement in a form prescribed by Division Two and give notice that appellee's filing fee shall be paid within the same period. ~~the Court within 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 appellate 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 30, ARIZONA RULES OF CIVIL APPELLATE PROCEDURE

RULE 30. ARIZONA APPELLATE SETTLEMENT CONFERENCE PROGRAM

(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.

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

(c) **Applicability.** 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) appeals from the Arizona Department of Economic Security Appeals Board; (6) direct appeals from the corporation commission; (7) workers' compensation appeals; and (8) special actions.

(d) **Order of Assignment.** Except as provided in paragraph (f) of this rule, Division Two of the Court of Appeals, shall select those cases for assignment to the Program which Division

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Two, deems most likely to benefit from alternative dispute resolution. Within three days after the appellant has filed the Notice of Appeal, Division Two may enter an order notifying the parties to a selected case that the case has been assigned to the Program. The order shall stay the normal appellate briefing schedule pending completion of the settlement process. The order may also stay posting bonds for costs on appeal, filing notices of cross-appeals, ordering transcripts from court reporters, or transmitting indexes of records on appeal. The assignment order shall also notify the appellant that the filing fee shall be paid within ten days.

(e) 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 appellate 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.

(f) Motion for Participation. Before the opening brief is filed, any party who has paid an appellate filing fee, has obtained a fee waiver or deferral or is exempt from payment of the fee 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 a copy of the civil appeals docketing statement shall be attached to the request. 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

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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 paragraph (h) 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.

(g) 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 paragraph (e).

(h) Settlement Statement. Upon appellant's payment of the filing fee, Division Two shall instruct the parties to submit within ten calendar days a confidential settlement statement in a form prescribed by Division Two and give notice that appellee's filing fee shall be paid within the same period. 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 appellate 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.

(i) Selection of Appellate Mediator. Upon assignment of a case to the Program, the settlement conference attorney shall

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select an 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.

(j) Authority of Appellate Mediator. 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.

(k) 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 paragraph (m) (6).

(l) 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.

(m) Settlement Conference.

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

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

(3) Attendance at the Conference. The parties and their attorneys shall attend the settlement conference in person unless the Court finds good cause to permit a party to participate by telephone. In the case of a corporation, partnership, association, governmental body or other organization, both a representative

having settlement authority for that party and the party's attorney shall attend. In the case of an official named as a nominal party, the Court shall ordinarily exempt such party from attendance.

(4) **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.

(5) **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.

(6) **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.

(n) **Confidentiality.**

(1) **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 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.

(2) **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.

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(3) Rules of Professional Conduct. Notwithstanding the provisions of paragraphs (n) (1) and (2), 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.

(o) 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.

(p) Disqualification of Appellate Mediator. Any person who participates as an appellate mediator shall not thereafter participate in any way in the consideration or disposition of the appeal on its merits.

(q) 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.

(r) 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.

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