

MEDIATION ORDERS – APPELLATE

Overview

Orders to Mediation are used to define the parameters a court has set for a particular case that is going to be mediated and to inform parties about the process and their responsibilities in it.

The best orders to mediation include all deadlines for the mediation, such as selection of the mediator, first mediation session, and final report. They should also include any other logistical issues pertinent to the court's program, such as whether or not discovery is stayed, or where the mediation is to be held.

Other information for the parties would include who is required to attend, what information the parties should prepare for the mediator, confidentiality provisions, as well as any other information about the process that the court would like to convey. In very complex cases, the parties may negotiate terms in the order to mediation.

GOOD EXAMPLES

Alabama Court of Civil Appeals Order Appointing Mediator Pursuant to Stipulation of the Parties

The mediation rules call for an order appointing the mediator to be sent to the parties and the mediator. This order covers deadlines for mediation and compensation of the mediator in simple, easily understood language.

The form also instructs the mediator to return a mediation report to the court within seven days of completion of mediation, along with evaluation forms completed by the parties. This is an important instruction often omitted on such forms. Along with the requirement, it needs to be clear about what the evaluation forms are and where they can be found. If the forms accompany the order, this final instruction is fine; if not, the court should provide instructions on how to access the forms.

Alabama Court of Civil Appeals Order of Referral to Mediation

In constructing this order, the Alabama Supreme Court provided detailed instructions to counsel regarding what steps must be taken during the mediation process and the deadlines for completing those steps. The language is clear and unambiguous.

Those using this as a sample may want to separate item #1 into two separate items for greater legibility.

**IN THE SUPREME COURT OF ALABAMA
or
ALABAMA COURT OF CIVIL APPEALS**

[Date]

[CASE # AND STYLE]

Mediator

[MEDIATOR]

ORDER APPOINTING MEDIATOR PURSUANT TO STIPULATION OF THE PARTIES

The above-named mediator is hereby appointed as appellate mediator in this matter. Mediation shall be conducted in conformity with the Alabama Appellate Mediation Rules; Rule 55, Alabama Rules of Appellate Procedure; and the Alabama Code of Ethics for Mediators. Mediation shall be completed within 63 days from **[ORDER OF REFERRAL]**, the date of the issuance of the Order of Referral to Mediation.

The mediator shall be compensated at a rate to be agreed upon between the parties and the mediator, which compensation shall be shared equally between the parties unless otherwise determined by final mediation agreement. An advance deposit covering the estimated cost of mediation may be required by the mediator, but in any event arrangements for payment of the cost of mediation must be coordinated directly with the mediator.

ORDERED this [DATE].

Appellate Mediation Administrator

cc: Counsel
Mediator, with enclosures

NOTE: Mediation is to conclude within 63 days from the date of the issuance of the Order of Referral to Mediation. The mediator shall file with the Appellate Mediation Office, 300 Dexter Avenue, Montgomery, Alabama 36104, a mediator's report along with completed evaluations within seven days after the completion of mediation.

IN THE SUPREME COURT OF ALABAMA
or
ALABAMA COURT OF CIVIL APPEALS

Case Number:

Style:

ORDER OF REFERRAL TO MEDIATION

The foregoing case, having been reviewed by the appellate mediation administrator, is hereby referred to appellate mediation.

ORDERED:

1. The above-styled case is referred to mediation. Within 14 days from the date of this order, **the appellant** shall advise the mediation office of the mediator chosen, using the enclosed Report on Status of Selection of Mediator form. The parties may agree on a mediator from the enclosed list of court-approved mediators to mediate this case, or they may agree on a mediator not on the list so long as that individual meets the qualifications set out in Rule 4 (a) (2) of the Alabama Appellate Mediation Rules. Please note that before a person can be accepted as an appellate mediator, he or she must submit a Mediator Application (Form 1) to the Appellate Mediation Office. It is the **appellant's** responsibility to obtain and submit a completed Mediator Application on all non-roster mediators to the Appellate Mediation Office. The Application and other forms can be found online at www.judicial.state.al.us/mediation. The parties are required to contact the mediator before returning the Report on Status of Selection of Mediator form to determine if the mediator they have agreed upon can serve. Upon receipt of the Report on Status of Selection of Mediator form, the appellate mediation administrator will enter an order appointing that mediator for this case. If the parties are not able to agree on a mediator, the appellate mediation administrator will appoint a mediator for this case from the appellate court mediator roster. If a party believes that the payment of mediation fees will cause an undue financial hardship on that party, the party may file a motion for waiver of mediator's fees with the appellate mediation administrator.
2. When a mediator is contacted regarding mediation, the parties should begin scheduling for mediation time(s) that are within the 63 days of the date of this order as provided in Rule 3(d), Alabama Rules of Appellate Mediation.
3. The parties shall submit Mediation Statements if the mediator so requests. Parties with full settlement authority and counsel are required to attend mediation sessions. If a party refuses to attend a mediation session or sessions, unreasonably delays the scheduling of mediation, or otherwise unreasonably impedes the conduct of the appellate mediation program, and the case is returned to the appellate docket as a result of those actions, the court may impose sanctions including, but not limited to, assessing reasonable expenses caused by the failure, including an award of

mediator and/or attorney fees; assessing all or a portion of the appellate costs; dismissal of the appeal; or such other appropriate action as the circumstances may warrant.

4. Each party shall appear at the mediation session or sessions. A party is deemed to appear at a mediation session if the following persons are physically present:
 - A) The party or its representative having full authority to settle without further consultation;
 - B) The party's counsel of record, if any; and
 - C) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.
5. Public entities shall be deemed to appear by the physical presence of a representative with full authority to negotiate and to recommend settlement to the public entity.
6. All appellate mediation sessions shall be confidential as provided in Rule 8 of the Alabama Appellate Mediation Rules, and the mediation will be conducted in accordance with the Alabama Appellate Mediation Rules, the Alabama Code of Ethics for Mediators, and Rule 55, Alabama Rules of Appellate Procedure.
7. The appellate process, including the times for preparing and transmitting the record and filing briefs in this case are stayed pending further order of this Court. **THE TIME FOR FILING ANY CROSS APPEAL OR RELATED APPEAL IS NOT STAYED.**
8. **THE MEDIATION SHALL BE COMPLETED WITHIN 63 DAYS FROM THE DATE OF THIS ORDER.**

Appellate Mediation Administrator

Date

cc: Counsel
Mediator

Enclosures: Appellate Mediation Roster
Report on Status of Selection of Mediator