

## MEDIATION REPORTS - APPELLATE

A good mediation report does three things: 1) it provides the court with information about what occurred in the mediation, such as whether the parties reached agreement; 2) it provides the court with the information it needs to ensure that the court rule regarding mediation was followed by the parties – particularly whether the parties attended as ordered; and 3) it provides the court with data for monitoring and evaluation purposes.

To accomplish these three tasks, the mediation report should ask a number of questions about the characteristics of the case, such as what type of case it is, the timing of the mediation, the amount of time spent in mediation, and who attended. It should also use checkboxes and structured-response questions as often as possible to make it easy to complete and to enter into a database, as well as to eliminate ambiguity in responses.

### GOOD EXAMPLES:

#### **Alabama Court of Civil Appeals Mediator's Report**

This report is fine for courts interested in obtaining minimal information from the mediators. What sets this form apart from others is that the mediators must sign off that they have attached completed evaluations by attorneys and parties. This encourages the return of evaluation forms and should thus increase response rate. It is recommended, however, that more information be required of the mediator for monitoring and evaluation purposes. See the 1<sup>st</sup> Appellate District of California's form as an example.

#### **California Court of Appeal, First Appellate District Mediator's Statement**

This is a detailed mediator report that asks a number of questions that can be used for monitoring the program. This goes beyond the minimum outcome information to include type of case, total time spent, fees and expenses, mediator style, etc. Especially good is the breakdown of preparation and mediation time, as well as the breakdown of the fees and the expenses.

The court gets high marks for requiring more information of the mediators. For a court using it as a model, however, a couple of the questions should be rewritten:

- The questions about time spent request the answer to be in 10ths of an hour. This could be a difficult calculation to make mediators who are not lawyers and is unnecessarily exact. Better to ask for nearest quarter of an hour or for hours and minutes, with minutes rounded to the nearest ten minutes.
- The mediator's primary style is subjective and open to interpretation. One mediator's facilitative mediation could be another's evaluative approach. If the intent is to correlate style to settlement or other factors, a better manner of collecting this information would be to ask if the mediator undertook certain behaviors that fall on the continuum of facilitative or evaluative.

And finally, leaving the comments to be completely open may lead to unintentional breach of confidentiality. A reminder to the mediators to make sure they do not divulge confidential information about the case would be helpful. Otherwise, it is best not to leave questions so open-ended.

(Form 13)

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

**Case Number:**

**Style:**

**MEDIATOR'S REPORT**

In accordance with the Court's mediation order, mediation occurred on the following date(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The results of that mediation are indicated below:

1. \_\_\_\_\_ The parties reached an agreement that disposes of all issues and all claims. A motion to dismiss will be filed with the clerk of the court.
2. \_\_\_\_\_ A partial agreement was reached. The appeal will continue as to the remaining claims.
3. \_\_\_\_\_ An impasse as to all issues.
4. \_\_\_\_\_ Other.

Completed evaluations by the mediator, the attorneys, and the parties are attached hereto; the evaluations by the attorneys and the parties are in sealed envelopes. I have submitted this report and the evaluations within seven days after the conclusion of the mediation.

**DONE** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_, Alabama.

\_\_\_\_\_  
Signature of mediator

Name of mediator: \_\_\_\_\_

Mailing address: \_\_\_\_\_

\_\_\_\_\_  
Telephone number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Fax: \_\_\_\_\_

Appellant: \_\_\_\_\_ Appellee: \_\_\_\_\_

Appellant's counsel: \_\_\_\_\_ Appellee's counsel: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

**NOTE: This form is to be filed within seven days after the completion of mediation by the appellate mediator. The mediator shall file this report with completed evaluations with the Appellate Mediation Office, 300 Dexter Avenue, Montgomery, Alabama 36104.**

## Court of Appeal, First Appellate District Mediator's Statement

PLEASE MAIL WITHIN 10 DAYS OF THE COMPLETION OF THE MEDIATION TO:  
JOHN TOKER, MEDIATION PROGRAM ADMINISTRATOR  
COURT OF APPEAL, FIRST APPELLATE DISTRICT  
350 McALLISTER STREET  
SAN FRANCISCO, CA 94102  
OR FAX TO 415-865-7374

***Please complete this statement without breaching confidentiality.***

TODAY'S DATE: \_\_\_\_\_

Case Name: \_\_\_\_\_ Case No: \_\_\_\_\_

Your Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Type of case:

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Attorney's Fees    | <input type="checkbox"/> Family Law            | <input type="checkbox"/> Partnership             |
| <input type="checkbox"/> Business /Contract | <input type="checkbox"/> Health Care           | <input type="checkbox"/> Personal Injury         |
| <input type="checkbox"/> Construction       | <input type="checkbox"/> Housing               | <input type="checkbox"/> Probate                 |
| <input type="checkbox"/> Defamation         | <input type="checkbox"/> Insurance             | <input type="checkbox"/> Professional Negligence |
| <input type="checkbox"/> Eminent Domain     | <input type="checkbox"/> Intellectual Property | <input type="checkbox"/> Public Entity           |
| <input type="checkbox"/> Employment/Labor   | <input type="checkbox"/> Landlord/Tenant       | <input type="checkbox"/> Real Estate             |
| <input type="checkbox"/> Environment        | <input type="checkbox"/> Medical Malpractice   | <input type="checkbox"/> Securities              |

Other (specify): \_\_\_\_\_

Preparation time (in tenths): \_\_\_\_\_ hours Total session time (in tenths): \_\_\_\_\_ hours

No. of sessions: \_\_\_\_\_ Follow-up time (in tenths): \_\_\_\_\_ hours

Total mediation fee for all parties (if any): \$ \_\_\_\_\_ Total expenses (if any): \$ \_\_\_\_\_

How did the case resolve?

\_\_\_ Full resolution    \_\_\_ Resolution of some issues (*How many?* \_\_\_)    \_\_\_ No resolution  
\_\_\_ Other (specify) \_\_\_\_\_

If the mediation resolved more than one dispute, check all that were resolved:

\_\_\_ Another appeal    \_\_\_ A trial court matter    \_\_\_ A matter not in litigation

Was your primary style in this case    \_\_\_ Facilitative    \_\_\_ Evaluative    \_\_\_ Directive?

Were counsel    \_\_\_ Trial attorneys    \_\_\_ Appellate attorneys    \_\_\_ Both?

Did you distribute evaluation forms?    \_\_\_ Yes    \_\_\_ No

On a scale of 1 (*very dissatisfied*) to 5 (*very satisfied*) please rate the court's mediation program as to:

___ Efficiency ( <i>scheduling, etc.</i> )	___ Paperwork
___ Courtesy and cooperation	___ Pro bono requirement

Comments on the above, including suggestions for program improvements: