



Mediation in Ohio Appellate Courts: How Every Practitioner Can Make it a Success

Carrie Connelly, Esq.
Sharon Maerten-Moore, Esq.
Sasha Blaine, Esq.




Appellate Mediation in Ohio




Currently, there are appellate mediation programs in each district except in the 1st, 2nd, 3rd, and 5th Districts.

App.Rs. 20 and 41 provide the authority to the appellate courts to create prehearing conferences and adopt rules concerning local practice.



Appellate Mediation in Ohio

District	Mediation Program	Pre-Hearing or Settlement Conference	Mediator	Local Rule	Attendance Mandatory	Stays	Confidentiality	Sanctions
1	No	Yes	None	20.1	n/a	n/a	n/a	n/a
2	No	No	None	No	n/a	n/a	n/a	n/a
3	No	Yes	None	19	Yes (excused by order of court)	By scheduling order	No	Potential dismissal for noncompliance
4	Yes	Yes	Yes	22	Yes	By request	Yes, except by agreement	Yes
5	No	No	No	n/a	n/a	n/a	n/a	n/a
6	Yes	No	Yes	13	Yes, unless excused or cancelled	By request	Yes	Yes
7	Yes	Yes	Yes	VIII	Yes	By motion	Yes	Yes
8	Yes	Yes	Yes	20	Yes	n/a	Yes	Yes
9	Yes	No	Yes	16	Yes, unless excused or cancelled	By request	Yes	Yes
10	Yes	Yes	Yes	5	Yes	By motion	Yes	Yes
11	Yes	No	Administrative Counsel	20	Yes, unless excused or cancelled	By motion	Yes	Yes
12	Yes	No	Yes	22	Yes, unless excused	By request	Yes	Yes
U.S. Sixth Circuit Court of Appeals	Yes	No	Yes	6 Cir. R. 33	Attorney attendance mandatory	At the direction of the mediator	Yes, except by agreement	Yes



Contact Information

Carrie Connelly

Asst. Court Administrator/Mediator

Ohio Sixth District Court of Appeals
One Constitution Avenue
Toledo, OH 43604

(419) 213-4755

cconnelly@co.lucas.oh.us

Sharon Maerten-Moore

Court Administrator/Magistrate

Ohio Fourth District Court of Appeals
14 South Paint Street, Suite 38
Chillicothe, Ohio 45601

(740) 779-6662

smaertenmoore@4thdistrictappeals.com

Sasha Blaine

Conference Attorney

Ohio Twelfth District Court of Appeals
1001 Reinartz Blvd.
Middletown, Ohio 45042

(513) 425-6609

sasha.blaine@twelfth.courts.state.oh.us

Contact Information

Sasha Blaine

Conference Attorney

Ohio Twelfth District Court of Appeals
1001 Reinartz Blvd.
Middletown, Ohio 45042

513.425.6609

sasha.blaine@twelfth.courts.state.oh.us

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Sharon Maerten-Moore

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14 South Paint Street, Suite 38
Chillicothe, Ohio 45601

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smaertenmoore@4thdistrictappeals.com

Appellate Mediation in Ohio



Appellate Courts without a Mediation Program: 1st, 2nd, 3rd, 5th

Rules Governing Appellate Mediation

App.R. 20

RULE 20. Prehearing Conference

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice. [Effective: July 1, 1971.]

First District

Rule 20.1 Prehearing conference; settlement conference

A. Prehearing conference. The court may set an appeal for a prehearing conference to consider matters that might aid the court in disposing of the appeal, including (1) the court's jurisdiction, (2) the record to be filed, (3) the time needed to prepare the record, (4) the time needed for briefing, (5) the assignments of error and issues to be presented, and (6) the relevant case law.

B. Settlement conference. The court may also set a settlement conference to explore resolving the parties' dispute.

Third District

LOCAL RULE 19. PRE-HEARING CONFERENCE

Upon receipt of the docketing statement (See Local Rule 3), administrative counsel for the Court shall review the statement and may, if necessary, schedule a pre-hearing conference with counsel of record. Said conference may include a discussion of:

- (1) the finality of the order being appealed
- (2) the type of record to be filed,
- (3) the probable time required to complete preparation of the record on appeal,
- (4) the assignments of error and issues to be raised,
- (5) any prior Court decisions on similar issues,
- (6) the time needed for briefing and oral argument,
- (7) the identity and address of all counsel involved and
- (8) other matters of particular relevance to the action.

If it is determined that a pre-hearing conference is necessary and after it has been held, the Court shall enter a Scheduling Order of events on appeal which will be excused or extended only by an order of the Court for good cause shown.

Any failure to comply with the foregoing rule may result in a dismissal of the appeal.

[Adopted effective October 1, 1991.]

Fourth District

LOCAL RULE 22 PREHEARING CONFERENCE; MEDIATION

(A) Scheduling. The court's mediator will review the notice of appeal, the trial court's judgment, and the docket statement in all civil and administrative appeals to determine whether a mediation conference is appropriate. If so, the court will notify the attorneys, or the litigants if unrepresented, of the name of the mediator and the date, time and location of the mediation. Any party may telephone the court to request a mediation conference. Any request for a mediation conference will be confidential if the requesting party desires.

(B) Purpose and Procedure. The person conducting the mediation conference will be the court's mediator, staff attorney or magistrate. The attorneys primarily responsible for the case, as well as their clients, are required to attend the mediation in person, or with the approval of the administrative counsel, by telephone. The goals of the mediation are:

(1) to explore settlement possibilities,

(2) to simplify the issues in the appeal if settlement is not achieved, and

(3) to consider any procedural problems that exist, may arise, or be anticipated in connection with the appeal. The court will attempt to schedule the mediation before any additional expense is incurred by the parties in proceeding with the appeal, that is, before the transcript of proceedings, if any, is filed or before appellant's brief is due, if no transcript of proceedings is to be filed.

(C) Extensions of Time to Transmit Record and File Briefs. The scheduling of a mediation conference does not stay the time for filing the transcript of proceedings or briefs. If a mediation conference is to occur after the date for transmitting the record under App.R. 10, or after the date the appellant's or the appellee's brief is due under App.R. 18, any party may telephone the mediator and request an order extending the time, until after the mediation, in which to transmit the record or file a brief. Thereafter, if the mediator determines that the parties are negotiating in good faith, additional extensions of time will be recommended on a party's oral request.

(D) Confidentiality. All statements and comments made in settlement negotiations during a prehearing conference are confidential, unless all parties expressly agree otherwise, and shall not be disclosed by the administrative counsel or by counsel in briefs or argument to the court.

(E) Noncompliance Sanctions. If a party or attorney fails to comply with the provisions of this rule or the provisions of the prehearing conference notice, the court may assess reasonable expenses caused by the failure, including attorney fees. The court may also assess all or a portion of the appellate costs or dismiss the appeal. Such sanctions may be imposed by the court sua sponte or at a party's request.

Sixth District

RULE 13. MEDIATION

The court offers a mediation service to litigants who have a case pending in the court and provides a mediator at no charge. The following mediation procedures apply to this service.

(A) Scheduling a Mediation. The court's mediation attorney shall review the notice of appeal, the trial court's judgment from which the appeal is taken, and the docketing statement in all civil and administrative appeals to determine whether a mediation will be scheduled. If a mediation is scheduled, the court will notify the attorneys, or the parties if unrepresented, of the name of the mediator and the date, time and location of the mediation. Any party may telephone the court to make a confidential request for mediation or to request that a scheduled mediation be canceled.

(B) Purposes and Procedure of the Mediation. Only the court's mediation attorney will conduct mediations. The attorneys primarily responsible for the case, as well as their clients, are required to attend the mediation in person, or with the approval of the mediator, by telephone. The goals of the mediation are:

- (1) to explore settlement possibilities,
- (2) to simplify the issues in the appeal if settlement is not achieved, and
- (3) to deal with any procedural problems which exist, may arise, or are anticipated in connection with the appeal. The court will attempt to schedule the mediation before any additional expense is incurred by the parties in proceeding with the appeal, i.e. preparation of the transcript of proceedings or briefs.

(C) Extensions of Time to Transmit Record and File Briefs. The scheduling of a mediation does not stay the time in which the transcript of proceedings or briefs must be filed. Any party may telephone the mediator and request that the court issue a sua sponte order extending the time, until after the mediation, in which to transmit the record or file a brief. Thereafter, if the mediator determines that the parties are negotiating in good faith, additional extensions of time will be recommended by the mediator on a party's oral request.

(D) Privilege and Confidentiality. The definitions contained in R.C. 2710.01 apply to all mediation conferences. The privileges contained in R.C. 2710.03 and the exceptions contained in R.C. 2710.05 apply to mediation communications. The privileges may be waived under R.C. 2710.04. Mediation communications are confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to disclosure.

(E) Noncompliance Sanctions. If a party or attorney fails to comply with the provisions of this rule, the court may impose appropriate sanctions.

(Effective July 1, 1992; effective January 1, 1998; effective November 1, 2000, amended, effective March 15, 2005; July 1, 2006; July 1, 2013.)

Seventh District

Rule VIII: Prehearing Conference and Mediation

Pursuant to App. R. 41 and App.R. 20, this Court hereby adopts the following prehearing and mediation conference procedure, applicable only to civil appeals and original actions filed in this court.

(A) Requesting and Scheduling a Prehearing Conference.

(1) The court shall review the docketing statement filed pursuant to Loc. R. VII to determine whether a prehearing conference under Ohio Appellate Rule 20 would be of assistance to the parties or the court, and if mediation will be part of the prehearing conference.

(2) If an appeal or original action is selected for conference and/or mediation, the Court conferencing attorney shall notify the parties of the date, time and location of the prehearing conference. A minimum notice of ten (10) calendar days shall be provided from the date that the notice of conference schedule is mailed.

(3) In addition, any party may request a prehearing conference or mediation by contacting the court conferencing attorney by phone, email, or fax, or by filing a notice with the court. Such requests may be made confidentially if the requesting party desires. Such requests shall be submitted as soon as possible after initiation of the appeal or original action, generally within ten (10) days from the date the appeal or original action is filed. Requests for a prehearing mediation conference may or may not be granted by the court.

(B) Purposes and Procedure of Prehearing Mediation Conference.

(1) The primary purposes of the prehearing mediation conference are: (1) to explore settlement possibilities through mediation, (2) to simplify the issues in the appeal or original action if settlement is not possible, and (3) to address any anticipated procedural problems. Additionally, any other matters that the conference attorney determines may aid in handling the disposition of the proceedings will be considered.

(2) The prehearing conference shall be held with the court's conferencing attorney. Conferences conducted in person shall be subject to the attendance requirements of Section(C) of this rule. Follow-up conferences may be conducted, either in person or by telephone, as directed by the court.

(3) The scheduling of a prehearing conference does not stay the time for filing the record, transcript of proceedings, or briefs. If a prehearing conference is scheduled, any party may request an extension of time by phoning the conference attorney, or making an oral or written request at the conference, and one (1) limited 21-day extension shall normally be granted if requested. Any other requests for extensions of time shall be by motion filed with the court. Generally, no more than one (1) extension shall be granted, unless such an extension will facilitate settlement. In all cases, requests for extensions of time must be made prior to the time sought be extended.

(C) Attendance. Unless otherwise instructed by the court, the following persons shall attend the prehearing mediation conference in person: counsel; the parties necessary for full settlement authority including insurance adjustors; and litigants not represented by counsel. "Counsel," for purposes of this rule, means the attorney with primary responsibility for the case and upon whose advice the party relies. Persons excused in advance by the court from attending in person shall be available by telephone during the scheduled conference.

(E) Privilege and Confidentiality. The privilege provisions of the Uniform Mediation Act, R.C. Chapter 2710, apply to all mediation conferences and communications. Mediation communications shall be privileged and therefore shall not be disclosed by the conference attorney or by the parties and shall not be used by the parties when presenting or arguing the case.

(F) Mediation Information Form. If a case is selected for a preconference hearing that involves mediation, the parties shall deliver to the conferencing attorney a confidential mediation information form provided by the Court. This form shall not be delivered or disclosed to any other party in the case, and shall not be filed with the court, but shall be delivered directly to the conferencing attorney by mail, fax, or email.

(F) Prehearing Mediation Conference Order. At the conclusion of the prehearing mediation conference, the Court, upon recommendation of the conference attorney, may enter an order setting forth the actions taken based on the agreements reached by the parties. Such order shall govern the subsequent course of proceedings, unless modified by the Court.

(G) Noncompliance Sanctions. Failure to comply with the provisions of this rule or any order of the court relating to a prehearing mediation conference may result in dismissal of the proceeding or an assessment of such costs as may be attributable to noncompliance including, but not limited to, attorney fees and court costs.

[Loc.R. VIII adopted effective November 1, 2015]

Eighth District

RULE 20. PREHEARING CONFERENCE

Under App.R. 20, this court's prehearing mediation conference procedure will operate as follows:

(A) Docketing Statement and Mediation Form.

(1) Each appellant and cross-appellant must complete a docketing statement and the praecipe form required by Loc.App.R. 9. 26.

(2) Counsel for appellant, cross-appellant, appellee or a self-represented party must complete and submit to the mediator the confidential mediation form provided by the mediator within ten days from date of receipt. The mediator will not disclose this form or its contents to the other parties, unless the submitting party consents to such disclosure. This form will not be filed with the Clerk of Courts for the Court of Appeals but rather sent directly to the Office of the Conference Mediator. (See ((C.)) Privileged Communications and Confidentiality.)

(B) Prehearing Mediation Conference.

(1) The mediator shall review the required docketing statement filed pursuant to Loc.App.R. 9 or complaint filed pursuant to Loc.App.R. 45 to determine whether a prehearing mediation conference, under App.R. 20, would assist the court or parties. Any party may request a prehearing mediation conference, but the request need not be granted. The court may, in its discretion, order the parties to mediate any action before the court at any stage in the proceedings.

(2) All mandamus actions involving compliance with R.C. 149.43, Ohio's Public Records Acts, shall be referred automatically to the mediation conference program for mediation. If the case is not amenable to mediation, the mediator shall inform the court and the action shall proceed in accordance with Loc.App.R. 45. If amenable to mediation, the mediation conference will proceed in accordance with the time period set forth in section (B)(3) below.

(3) If an appeal or complaint is selected for a prehearing mediation conference, upon seven days' notice from the office of the conference mediator, unless excused, counsel and parties (including insurance adjusters) are required to attend a prehearing mediation conference before the court's mediator or a visiting judge. The mediation conference is to be held within 21 days after the filing of the notice of appeal or complaint, or as soon thereafter as practicable, to consider the possibility of settlement, the simplification of issues, and such other matters as may aid in the disposition of the proceedings by the court.

(C) Privileged Communications and Confidentiality.

(1) Except to the extent disclosed by the prehearing mediation conference order entered under Paragraph (E) of this Rule, the definitions contained in R.C. 2710.01 apply to the mediation. The privileges contained in R.C. 2710.03 and the exceptions contained in R.C. 2710.05 apply to mediation communications. The privileges may be waived under R.C. 2710.04. Mediation communications are also confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to such disclosure. This court may impose sanctions for any improper disclosures made in violation of this rule.

(2) All mediation communications are confidential with the following exceptions:

(a) Parties may share all mediation communications with their attorneys or vice versa.

(b) The mediator shall inform the court or report to the proper authorities certain information, including the following:

(i) Allegations of abuse or neglect of a child or other individual as required by the law;

(ii) Certain threats of harm to other people or oneself;

(iii) Statements made during the mediation process to plan or hide an ongoing crime;

(iv) Statements made during the mediation process that reveal a felony.

(D) Prehearing Mediation Conference Order. At the conclusion of the prehearing mediation conference, the Administrative Judge, upon recommendation of the mediator, may enter an order setting forth how the action is to proceed. Said order shall remain in force unless modified by the court. If a settlement is reached, the mediator shall submit an outcome report to the Administrative Judge advising the Administrative Judge that the matter is settled and is to be dismissed as final upon application of the appellant or relator to dismiss or remand in compliance with the applicable appellate rules.

(E) Noncompliance Sanctions. If a party or attorney fails to comply with the provisions of this rule or the provisions of the prehearing mediation conference order, the Administrative Judge may hold a party in contempt and/or assess reasonable expenses caused by the failure, including attorney fees. The court may also assess all or a portion of the appellate costs or dismiss the appeal or original action. [Amended effective March 29, 2017.]

Ninth District

LOCAL RULE 16. MEDIATION

(A) Scheduling.

- (1) The Court's Mediation Attorney will review the notice of appeal, the trial court's judgment from which the appeal is taken, and the docketing statement in all civil and administrative appeals to determine whether a mediation conference will be scheduled. Any party may telephone the Mediation Attorney to make a confidential request for mediation or to request that a scheduled mediation be cancelled.
- (2) When an appeal is selected for a mediation conference, the Mediation Attorney will notify the attorneys of record, or the parties if unrepresented, of the date, time, and location of the mediation. At the discretion of the Mediation Attorney, conferences may be conducted by telephone when practicable.
- (3) When possible, the conference will be held in the county from which the appeal originates. At the discretion of the Mediation Attorney, conferences may be conducted in another county within the District or by telephone.

(B) Purposes and Conduct of the Mediation Conference.

- (1) The goals of the mediation conference are to (a) explore settlement possibilities (b) to simplify the issues in the appeal if settlement is not achieved, and (c) to address any procedural problems which exist, may arise, or are anticipated in connection with the appeal.
- (2) Counsel, parties, and any other persons whose consent is necessary to discuss settlement (including insurance adjusters) are required to attend the mediation conference. "Counsel," for purposes of this Rule, means an attorney who is not only conversant with the case but upon whose advice the party relies. Persons excused in advance by the Mediation Attorney from attending in person shall be available by telephone.
- (3) In the discretion of the Mediation Attorney, the parties may be required to provide a written mediation statement in advance of the mediation conference. Any such mediation statements are considered mediation communications and are subject to the privilege and confidentiality provisions set forth in this Rule. As such, they are to be sent to the attention of the Mediation Attorney in lieu of filing with the respective Clerk of the Court of Appeals.

- (C) **Extensions of Time to Transmit Record and File Briefs.** The Mediation Attorney will attempt to schedule mediation conferences as expediently as possible after the notice of appeal is filed. The scheduling of a mediation conference, however, does not automatically stay the time in which the transcript of proceedings must be transmitted or the briefs must be filed. Prior to the mediation conference, any party may telephone the Mediation Attorney and request an extension of time in which to transmit the record or file the brief and assignments of error until after the mediation conference has been conducted. Thereafter, extensions of time may be recommended by the Mediation Attorney upon a party's oral request.

(D) Privilege and Confidentiality. The definitions contained in R.C. 2710.01 apply to mediation in the Court of Appeals. The privileges contained in R.C. 2710.03 and the exceptions contained in R.C. 2710.05 apply to mediation communications. The privileges may be waived under R.C. 2710.04. Mediation communications are confidential, and no one shall disclose any of these communications unless all parties and the mediator consent to disclosure

[Adopted eff. 1-1-08; amended eff. 1-1-10; amended eff. 2-1-17.]

Tenth District

RULE 5 PREHEARING CONFERENCE PROCEDURE

(A) Applicability This Rule applies to all civil and administrative appeals in this Court.

(B) Transmission of Documents from Clerk of the Trial Court Upon the filing of a notice of appeal, the clerk of the trial court or the administrative agency shall forthwith transmit a copy of the notice of appeal to the clerk of the Court of Appeals, together with a copy of:

- (1) all filings by appellant pursuant to Tenth District Court of Appeals Local Rules 9 App.R. 9(B);
- (2) the docket entries;
- (3) the docketing statement;
- (4) the judgment or order sought to be reviewed; and
- (5) the decision or opinion, if any, and findings of fact and conclusions of law, if any. Such transmittal shall be by means of the e-Filing system whenever possible.

(C) Response by Appellee or Cross-Appellee Within seven days after service of appellant's or cross-appellant's docketing statement, each appellee may, if desired, file with the clerk of the Court of Appeals, with service on all other parties, a statement report, not to exceed five pages, containing any information which may assist the Court and parties in clarifying the issues or settling the appeal or cross-appeal.

(D) Prehearing Conference

(1) Civil and administrative appeals to which this Rule applies shall be reviewed by this Court's Chief District Mediator to determine if a prehearing conference, pursuant to App.R. 20, would be of assistance to the Court or parties. Any party may request a prehearing conference; however, the request need not be granted.

(2) If an appeal is selected for conference, upon seven days notice from the Chief District Mediator, the attorneys, and the parties if requested, shall attend a prehearing conference before the Chief District Mediator, to be held within 14 days after the filing of the notice of appeal, or as soon thereafter as practicable, to consider the possibility of settlement, the simplification of issues, and such other matters as may aid in the disposition of the proceedings by the Court. Any case selected for conference which has been assigned to the accelerated calendar shall be removed from the accelerated calendar and assigned to the regular calendar. Tenth District Court of Appeals Local Rules 10

(3) Except to the extent disclosed by the prehearing conference order entered pursuant to Section E of this Rule, information contained in statements or comments made during the prehearing conference shall be regarded as disclosed solely for purposes of settlement negotiations, and shall neither be treated as admissions, nor as limiting the disclosing party in presenting or arguing that party's case.

(E) Prehearing Conference Order At the conclusion of the prehearing conference, the Judge, or the Presiding Judge upon recommendation of the Chief District Mediator, may enter an order setting forth the actions taken and the agreements reached, which order shall govern the subsequent course of proceedings, unless modified by the Court.

(F) Non-compliance Sanctions If a party or attorney fails to comply with the provisions of this Rule or the provisions of the prehearing conference order, the Court may assess reasonable expenses caused by the failure, including attorney fees; assess all or a portion of the appellate costs; or dismiss the appeal.

Eleventh District

RULE 20. PREHEARING CONFERENCE; MEDIATION

Under Ohio App.R. 20, this court's prehearing and mediation conference procedure will operate as follows:

(A) Prehearing Conference Scheduling.

(1) Civil and administrative appeals will be reviewed by this court's Administrative Counsel promptly after the filing of the notice of appeal to determine whether a prehearing conference under Ohio App.R. 20 would assist the court or the parties. In addition, any party may telephone the court's Administrative Counsel to request a prehearing conference to be held or to be canceled. Such request will be confidential if the requesting party desires.

(2) If an appeal is selected for conference, upon 21 days notice from the court, 23 unless excused, counsel and parties (including insurance adjusters) are required to attend a prehearing conference before the court's Administrative Counsel when possible in the county of origin. Persons excused in advance by the Administrative Counsel from attending in person shall be available by telephone. At the discretion of the Administrative Counsel, conferences may be conducted telephonically.

(B) Purposes and Conduct of Prehearing Conference.

(1) The primary purpose of the prehearing mediation conference is to explore settlement possibilities through mediation and to address anticipated procedural matters. Additionally, any other matters that the Administrative Counsel determines may aid in the disposition of the proceedings will be considered.

(2) The statements and comments made in settlement negotiations during the prehearing conference are confidential except to the extent disclosed by the prehearing conference order under Paragraph (C) and shall not be disclosed by the Administrative Counsel nor by parties or their counsel.

(3) The scheduling of a prehearing conference does not stay the time for filing the record, transcript of proceedings, or briefs.

(C) Prehearing Conference Order. At the conclusion of the prehearing conference, this court's Administrative Judge, upon recommendation of the Administrative Counsel, may enter an order setting forth the actions taken and the agreements reached by the parties.

(D) Noncompliance Sanctions. If a party or attorney fails to comply with the provisions of this Rule or the provisions of the prehearing conference order or settlement agreement, this court may assess reasonable expenses caused by the failure, including attorney fees. This court may also assess all or a portion of the appellate costs or dismiss the appeal.

Twelfth District

Rule 22 PREHEARING MEDIATION CONFERENCE PROCEDURE.

Pursuant to App. R. 20, this court hereby adopts the following prehearing mediation conference procedure, applicable only to civil and administrative appeals and original actions filed in this court.

(A) Requesting and Scheduling a Prehearing Mediation Conference. The court shall review the required docket statement filed pursuant to Loc. R. 4 or complaint filed pursuant to Loc. R. 20 to determine whether a prehearing mediation conference would be of assistance to the parties or the court. If a prehearing mediation conference is deemed advisable, the court shall notify the parties of the date, time and location of the prehearing mediation conference.

In addition, any party may request a prehearing mediation conference by contacting the conference attorney or by written motion to the court. Such requests may be made confidentially if the requesting party desires. Such requests shall be submitted as soon as possible after initiation of the appeal. Requests for a prehearing mediation conference may or may not be granted by the court.

(B) Purposes and Procedure of Prehearing Mediation Conference. The prehearing mediation conference shall be held with the court's conference attorney. Conferences conducted in person shall be subject to the attendance requirements of Section (C) of this rule. Follow-up conferences may be conducted, attended either in person or by telephone, as directed by the court. The primary purposes of the prehearing mediation conference are: (1) to explore settlement possibilities through mediation, (2) to simplify the issues in the appeal or original action if settlement is not possible, and (3) to address any anticipated procedural problems. Additionally, any other matters that the conference attorney determines may aid in handling the disposition of the proceedings will be considered.

It is desirable to hold the prehearing mediation conference before the parties incur additional expense. Therefore, the court will make every effort to schedule the prehearing mediation conference before the transcript of proceedings is to be filed or before the appellant's brief is due if no transcript of proceedings is to be filed. Because this is not always possible, the parties are cautioned that the scheduling of a prehearing mediation conference **does not** automatically stay the time in which the transcript of proceedings or briefs must be filed.

(C) Attendance. Unless otherwise instructed by the court, the following persons shall attend the prehearing mediation conference in person: counsel, the parties necessary for full settlement authority including insurance adjustors, and litigants not represented by counsel. "Counsel," for purposes of this rule, means the attorney with primary responsibility for the case and upon whose advice the party relies. Persons excused in advance by the court from attending in person shall be available by telephone during the scheduled conference.

(D) Extension of Time to File Record and Briefs. If a prehearing mediation conference is scheduled after the date the record is to be transmitted or after a brief is to be filed, the affected party may telephone the court's conference attorney and request that the court issue a *sua sponte* order extending the time in which to transmit the record or file the brief. Requests for extensions may also be made orally at the prehearing mediation conference. Thereafter, such requests may be made by telephone; however, the court may require the request be made by written motion pursuant to App. R. 10 or 14 and Loc. R. 10 or 14. In all instances, the request shall be made prior to the time sought to be extended has expired and shall indicate whether any other party opposes the request for extension. Requests for extension made pursuant to this section may be granted if the court deems it would facilitate settlement.

(E) Privilege and Confidentiality. The privilege and confidentiality provisions of the Uniform Mediation Act, R.C. Chapter 2710, apply to all prehearing mediation conferences. Mediation communications shall be privileged and therefore shall not be disclosed by the conference attorney or by the parties and shall not be used by the parties when presenting or arguing the case. Mediation communications shall also be confidential unless all parties and the conference attorney consent to disclosure.

(F) Prehearing Mediation Conference Order. At the conclusion of the prehearing mediation conference, a judge or magistrate, upon recommendation of the conference attorney, may enter an order setting forth the actions taken based on the agreements reached by the parties. Such order shall govern the subsequent course of proceedings, unless modified by the Court.

(G) Noncompliance Sanctions. Failure to comply with the provisions of this rule or any order of the court relating to a prehearing mediation conference may result in dismissal of the proceeding or assessment of such costs as may be attributable to noncompliance including, but not limited to, attorney fees and court costs.

U.S. Court of Appeals for the Sixth Circuit

6 Cir. R. 33 Appeal Conferences - Mediation

(a) Civil Appeal Statement of Parties and Issues. The appellant, petitioner, or applicant in a civil case must file with the court and serve on all parties a Civil Appeal Statement of Parties and Issues.

(1) When to File. The Civil Appeal Statement must be filed as directed by the court.

(2) What to File.

(A) In an appeal from the district court or Tax Court, the Civil Appeal Statement must be filed on Form 6CA-53.

(B) In an appeal from or application for enforcement of an administrative agency order, the Civil Appeal Statement must be filed on Form 6CA-54.

(C) The forms are available on the court's website.

(3) Exception. A pro se appellant, petitioner, or applicant is not required to file a Civil Appeal Statement.

(4) Response. No response to the Civil Appeal Statement is permitted.

(b) Mediation Procedures.

(1) Selection of Cases for Mediation. The Office of the Circuit Mediators reviews civil appellate cases to determine whether mediation would be appropriate. If so, a mediation conference is scheduled. In addition, counsel may contact the mediation administrator and request a mediation conference. Requests will remain confidential unless counsel instructs otherwise.

(2) Notice of Mediation Conference. When a case is selected for mediation, counsel will receive a mediation conference notice stating the date and time of the conference and other relevant information about the process.

(3) Submission of Confidential Mediation Background Information Form. Counsel must submit the Confidential Mediation Background Information Form as directed in the mediation conference notice. The form is submitted directly to the mediation office and shall not be filed or otherwise disclosed to the court or other parties.

(4) Mediation Conferences.

(A) General. A Circuit Mediator conducts the conference. The clerk, at the direction of the mediator, may enter orders controlling the course of the proceedings.

(B) Purposes. The primary purpose of the conference is to explore, in depth, possibilities for settlement, including the parties' interests, objectives, and possible bases for resolution of the appeal. Procedural issues may also be addressed.

(C) Attendance/Participation. Lead counsel and any other attorney with primary authority on behalf of each party must participate in the conference. Co-counsel or other attorneys whose participation would be beneficial are welcome to participate as well. The mediator may conduct more than one conference. Clients' attendance in the initial conference is not mandatory but is welcome. The decision regarding client participation in the initial conference is left to counsel. The mediator may direct that clients participate in subsequent conferences.

(D) Confidentiality. Communications in mediation conferences or in connection with the mediation process are confidential. They may not be disclosed or otherwise used by any mediation participant, except as agreed in advance by all participants.

(c) Non-Compliance; Sanctions.

(1) Failure to File Civil Appeal Statement. The clerk may assess sanctions if the appellant, petitioner, or applicant fails to properly file the Civil Appeal Statement.

(2) Failure to Submit the Confidential Mediation Background Information Form. The clerk may assess sanctions if a party fails to properly submit the Confidential Mediation Background Information form.

(3) Other Sanctions. If an attorney or party fails to comply with a provision of this rule or a mediation order, the court may take any or all of the following actions:

(A) Remove the case from mediation;

(B) Assess reasonable expenses caused by the failure, including attorney's fees;

(C) Assess all or a portion of the appellate costs;

(D) Dismiss the appeal; and

(E) Impose further sanctions as the court deems appropriate

Fourth District Court of Appeals

Mediation Summary (2011-2015)

2011 -	Total Cases Mediated:	29
	Cases Settled/Voluntarily Dismissed:	14
	Non-Settled Cases:	15
	(11 affirmed; 1 affirmed in part/reversed in part/remanded; 2 dismissed (moot and lack of final appealable order); 1 reversed and remanded)	
	Settlement Rate:	48%
2012-	Total Cases Mediated:	30
	Cases Settled/Voluntarily Dismissed:	11
	(and 2 partial)	
	Non-Settled Cases:	19
	(11 affirmed; 3 affirmed in part/reversed in part; 2 reversed and remanded; 3 dismissed)	
	Settlement Rate:	40%
2013-	Total Cases Mediated:	28
	Settled/Voluntarily Dismissed:	16
	Non-Settled Cases:	12
	(4 affirmed; 1 reversed; 1 reversed/remanded; 1 affirmed in part/reversed in part/remanded; 4 dismissed; 1 voluntarily dismissed after bankruptcy)	
	Settlement Rate:	57%
2014-	Total Cases Mediated:	27
	Cases Settled/Voluntarily Dismissed:	14
	Non-Settled Cases:	13
	(7 affirmed; 1 reversed/remanded; 3 affirmed in part/reversed in part/remanded; 2 dismissed by court)	
	Settlement Rate:	52%

2015- Total Cases Mediated:	24
Cases Settled/Voluntarily Dismissed:	15
	(and 1 partial)
Non-Settled Cases:	9
(4 affirmed; 2 reversed/remanded; 3 dismissed by court)	
Settlement Rate:	64.5%

OHIO SIXTH DISTRICT COURT OF APPEALS

Mediation Summary

January 1 – December 31, 2012

Total cases set for mediation.....	55	
Total cases mediated.....	39	
Total cases pending mediation.....	5	
Total cases where mediation conference was cancelled at the request of one or more parties.....	16	
<hr/>		
Total mediated cases settled	10	26%
Total mediated cases not settled	13	33%
Total mediated cases dismissed for a reason other than settled (appellant did not file a brief, not final and appealable, etc.).....	5	13%
Total mediated cases in continuing negotiations.....	6	15%

OHIO SIXTH DISTRICT COURT OF APPEALS

Mediation Summary

January 1 – December 31, 2013

Total cases set for mediation.....	65	
Total cases mediated.....	44	
Total cases pending mediation.....	3	
Total cases where mediation conference was cancelled at the request of one or more parties.....	18	

Total mediated cases settled	12	27%
Total mediated cases not settled	15	34%
Total mediated cases dismissed for a reason other than settled (appellant did not file a brief, not final and appealable, etc.).....	7	16%
Total mediated cases in continuing negotiations.....	10	23%

OHIO SIXTH DISTRICT COURT OF APPEALS

Mediation Summary

January 1 – December 31, 2014

Total cases set for mediation.....	69	
Total cases mediated.....	42	
Total cases pending mediation.....	15	
Total cases where mediation conference was cancelled at the request of one or more parties.....	12	

Total mediated cases settled	18	42.86%
Total mediated cases not settled	13	30.95%
Total mediated cases dismissed for a reason other than settled (appellant did not file a brief, not final and appealable, etc.).....	6	14.29%
Total mediated cases in continuing negotiations.....	5	11.90%

OHIO SIXTH DISTRICT COURT OF APPEALS

Mediation Summary

January 1 – December 31, 2015

Total cases set for mediation.....	61	
Total cases mediated.....	40	
Total cases pending mediation.....	3	
Total cases where mediation conference was cancelled at the request of one or more parties.....	18	

Total mediated cases settled	14	35.00%
Total mediated cases not settled	21	52.50%
Total mediated cases dismissed for a reason other than settled (appellant did not file a brief, not final and appealable, etc.).....	3	7.50%
Total mediated cases in continuing negotiations.....	2	5.00%

OHIO SIXTH DISTRICT COURT OF APPEALS

Mediation Summary

January 1 – December 31, 2016

Total cases set for mediation.....	67	
Total cases mediated.....	39	
Total cases pending mediation.....	14	
Total cases where mediation conference was cancelled at the request of one or more parties.....	14	

Total mediated cases settled	18	46.15%
Total mediated cases not settled	11	28.20%
Total mediated cases dismissed for a reason other than settled (appellant did not file a brief, not final and appealable, etc.).....	7	17.95%
Total mediated cases in continuing negotiations.....	3	7.70%

Twelfth District Mediation Program Summary

2015-2017

2015	Total cases mediated	57
	Cases settled/voluntarily dismissed	38
	Cases not settled	19
	Settlement rate	66.7%
2016	Total cases mediated	53
	Cases settled/voluntarily dismissed	32
	Cases not settled	21
	Settlement rate	60.4%
2017	Total cases mediated	51
	Cases settled/voluntarily dismissed	31
	Cases not settled	20
	Settlement rate	60.8%

CIVIL DOCKET STATEMENT

1. Counsel for the appellant, or the appellant if pro se, **must** complete, serve, and file this docket statement at the time of filing the notice of appeal.
2. A copy of the judgment entry or order which is being appealed **must** be attached to the notice of appeal.
3. A copy of the order for the transcript of proceedings **must** be filed with the clerk and served on the court reporter at the time of filing the notice of appeal.
4. If less than the entire transcript of proceedings is to be included in the record, appellant **must**, at the time of filing the notice of appeal, file a statement of the assignments of error appellant intends to present on appeal.

Court of Appeals Case No.: _____ County: _____

Case Caption: _____

Counsel for appellant or appellant pro se:

Name: _____ Address and Telephone: _____

Counsel for appellee or appellee pro se:

Name: _____ Address and Telephone: _____

Trial Judge: _____ Trial Court Case No.: _____

Date notice of appeal filed: _____

Date that judgment or order appealed from was filed: _____

Related Appeals Nos.: _____

Does this case involve multiple parties? Yes ___ No ___

Does this case involve multiple claims? Yes ___ No ___

Does Civ.R. 54(B) apply? Yes ___ No ___

Is there a "no just reason for delay" certification? Yes ___ No ___

Record (indicate type of record to be filed): _____

There will be a full ___ partial ___ transcript of the proceedings filed. If partial, designate parts: _____

There will be an App.R. 9(C) statement: ___

There will be an App.R. 9(D) agreed statement:___

No transcript, statement, or agreed statement to be filed:___

Has a notice of appeal been previously filed in this court concerning this case?

Yes___ No___

If yes, what was the previous appellate case number?_____

Nature of the case (for example, personal injury; administrative appeal; will contest; domestic relations; etc.):_____

Is appellate counsel different from trial counsel? Yes___ No___

Does this case turn upon an interpretation or application of a particular case(s) or statute(s)? Yes___ No___ If yes, please list the cases or statutes:_____

How would you characterize the extent of your settlement discussions prior to judgment in the trial court? None___ Minimal___ Modest___ Extensive___

Have post-judgment settlement discussions occurred? Yes___ No___

Would a preliminary mediation conference be of any assistance in resolving this matter? (Note – the primary purpose of the mediation conference is to encourage the parties to explore any possibilities for the settlement of this case before incurring additional expenses, or, if settlement is not possible, to limit the issues on appeal.)

Yes___ No___ Please explain: _____

TRANSCRIPT INFORMATION [App.R. 9(B)]

___ I have ordered a complete transcript of proceedings from the court reporter.

___ I have ordered a partial transcript of proceedings from the court reporter.

___ A statement of the evidence pursuant to App.R. (C) or (D) is to be prepared in lieu of a transcript of proceedings.

___ No transcript of proceedings or statement of the evidence pursuant to either App.R. 9(C) or (D) is necessary and I have notified the court reporter of that fact in writing pursuant to App.R. 9(B).

___ The transcript of proceedings has been completed and already made part of the record.

Name:_____

Attorney for:_____

(TRIAL COURT)

Plaintiff / Appell _____

v. _____

Defendant / Appell _____

Trial Court Case No. _____

Court of Appeals
Case No. _____

Date Trial Court's
Judgment Entry being
appealed was entered
on the journal _____

DOCKETING STATEMENT
Pursuant to App.R. 3 (F),
6th Dist. Loc. App.R. 3 (C)
and 12 (A)

1. This appeal should be assigned to:

The expedited calendar for the reason checked:
(See App.R. 11.2 / R.C. 3109.04(H))

A. Abortion related appeal

B. Appeal from order granting or denying adoption of minor or granting or denying termination of parental rights

C. Appeal concerning dependent, abused, neglected, unruly, delinquent child

D. Prosecutorial appeal from suppression order

The accelerated calendar for the reason checked:
(See App.R. 11.1 and 3(G) as well as 6th Dist. Loc. App.R. 12.)

A. No transcript is required

B. The transcript is of such length that its preparation time will not be a source of delay. (The transcript in an accelerated appeal is to be filed within 20 days of filing the notice of appeal. See App. R. 10 (A).)

C. An agreed statement will be submitted within 20 days.

D. The record was made in an administrative hearing and was filed with the trial court.

E. All parties to the appeal (as shown by the attached statement) agree to an assignment to the accelerated calendar.

The regular calendar for reason (s) checked:

A. The transcript is of such length that its preparation time will take more than 20 days from the date the notice of appeal is filed.

B. A brief in excess of 15 pages is necessary to adequately argue the issues.

C. The appeal concerns unique issues of law which will be of substantial precedential value in the determination of similar cases.

D. Other _____

2. Probable issues for review:

3. Has a notice of appeal been previously filed in this court concerning this case or a related case?

Yes No

If so, what was the previous appellate case number? _____

(QUESTIONS 4 THROUGH 8 APPLY TO CIVIL AND ADMINISTRATIVE APPEALS ONLY)

4. Nature of Case: (for example: Personal Injury (slip and fall); administrative appeal (zoning); termination of parental rights; probate (will contest); breach of contract; malpractice (legal); etc.

5. Does the appeal depend on an interpretation or application of a particular case (s) or statute (s).

Yes No If yes, please cite case (s) or statute (s) _____

6. How would you characterize the extent of your settlement discussions prior to judgment in the trial court?

None Minimal Moderate Extensive

7. Have post-judgment settlement discussions taken place?

Yes No

8. Would a mediation pursuant to 6th Dist. Loc. App.R. 13 be of any assistance in the resolution of this matter? *

Yes

No

Maybe

Please explain (optional).

(Name)

Attorney for _____

(Address, telephone number)

(Supreme Court Registration Number)

*THE PRIMARY PURPOSE OF A MEDIATION IS TO HELP THE PARTIES EXPLORE POSSIBILITIES FOR SETTLEMENT OF THE CASE BEFORE INCURRING ADDITIONAL EXPENSES.

Court of Appeals of Ohio

FOURTH APPELLATE DISTRICT

Judge William H. Harsha
14 South Paint Street - Suite 38
Chillicothe, Ohio 45601
(740) 779-6662
Fax (740) 779-6665

COUNTIES

Adams • Athens • Gallia
Highland • Hocking • Jackson
Lawrence • Meigs • Pickaway
Pike • Ross • Scioto
Vinton • Washington

January 10, 2018

John Smith, Esq.
Smith & Sinatra, LPA
123 Lawrence Ln.
Jackson, OH 45640

Loretta Lynne, Esq.
Lynne, McGee & Shell, LPA
789 College Rd.
Athens, OH 45701

NOTICE OF IN-PERSON PREHEARING CONFERENCE

RE: *Friends v. Foes*, Athens App. No. 17CA10

Dear Counsel:

Pursuant to Local Rule 22, an in-person prehearing conference has been scheduled with Court Administrator Sharon Maerten-Moore on **Friday, February 9, 2018 at 10:00 a.m.** **Counsel and parties are required to attend.** The hearing will take place at the Chillicothe Office of the Fourth District Court of Appeals, 14 South Paint Street, Suite 38, Chillicothe, Ohio 45601. The prehearing conference procedures set forth in Local Rule 22 **do not** automatically suspend the running of time for further steps in the matter.

There are several purposes for this conference. One is to attempt to resolve any procedural problems in the case. A second is to identify and clarify the main issues being raised in the case. A third and **primary** purpose of this prehearing conference is to explore any possibilities there may be for a **settlement** of the case. All counsel are expected to come prepared to discuss these purposes and with **authority** to respond to settlement proposals that are consistent with their clients' interests. The conference is scheduled for one hour, but may be extended as needed.

Counsel addressed are understood to be the attorneys with the primary responsibility of the case and are required to participate, along with the parties. If the purposes of the conference would be better accomplished with different or additional counsel, or if this date presents an **unavoidable** conflict, the undersigned must be contacted immediately by telephone at (740) 779-6662, by fax at (740) 779-6665, or by e-mail at smaertenmoore@4thdistrictappeals.

SHARON A. MAERTEN-MOORE
COURT ADMINISTRATOR

Mediation Letter

[DATE]

VIA TELEFAX TRANSMITTAL:

[Appellant Atty.], Esq.
[Address]
[phone #]
[fax #]

and

[Appellee Atty.], Esq.
[Address]
[phone #]
[fax #]

RE: [Case Name; Case No.]

Dear :

A mediation conference has been scheduled in the above referenced case for [**Scheduled Date**], at [**Scheduled Time**] p.m., at the Ohio Sixth District Court of Appeals, One Constitution Ave., Toledo, Ohio. The Court urges you to take advantage of this mediation process. However, our mediation program is not mandatory and if you have a reservation about the effectiveness of mediation in this appeal, please call me at 419-213-4755 to discuss whether it is appropriate for this case.

I will be serving as the mediator in this case; if you have any questions about the mediation process please feel free to call me. Unless I cancel this mediation, you and your client, who has settlement authority and who is required to attend, should plan to be at the conference for at least **two hours**.

If you or your client are unable to attend at the date and time scheduled above, and please contact **Steve** at **419-213-4462** as soon as possible.

Finally, if you would like an **extension of time** to file the record or your brief until after the mediation, please call Seidona. Our mediation rule, 6th Dist.Loc.App.R. 13, allows you to obtain such an extension without filing a motion. This is true even in cases assigned to the accelerated calendar.

Directions to our court are on our website, www.co.lucas.oh.us/appeals. Also there is on-site parking for your convenience.

Very truly yours,

Carrie A. Connelly
Mediator

CAC:sz

Court of Appeals of Ohio

JUDGES:
ROBERT A. HENDRICKSON
ROBIN N. PIPER
MIKE POWELL
STEPHEN W. POWELL
ROBERT P. RINGLAND

COURT ADMINISTRATOR
MAGISTRATE
BENNETT A. MANNING, Esq.

ASSISTANT COURT ADMINISTRATOR
SCOT M. RITTER, Esq.



TWELFTH APPELLATE DISTRICT
1001 REINARTZ BOULEVARD
MIDDLETOWN, OHIO 45042
www.twelfth.courts.state.oh.us

CONFERENCE ATTORNEY
SASHA A.M. BLAINE, Esq.

ASSIGNMENT COMMISSIONER
JUDITH F. ECKERT

FISCAL OFFICER
JENNIFER J. LoBUONO

513-425-6609
OHIO 800-824-1883
FAX 513-425-8751

June 18, 1804

Gouvernor Morris, Esq.
123 Jane Street
New York, New York 10101
Counsel for Appellant

James Wilkinson, Esq.
789 Kings College Way
New York, New York 10101
Counsel for Appellee

NOTICE OF IN-PERSON PREHEARING CONFERENCE ATTORNEY & CLIENT

RE: *Aaron Burr v. Alexander Hamilton*,
Weehawken CA1804-07-049

Dear Counsel:

Pursuant to App.R.20, an in-person prehearing conference has been scheduled with this court's Conference Attorney, Sasha A.M. Blaine, on:

**July 4, 1804
10:00 a.m. – 3:00 p.m.
Twelfth District Court of Appeals
1001 Reinartz Blvd.
Middletown, Ohio 45042**

There are several purposes for this conference. One is to prevent unnecessary motions or delay by attempting to resolve any procedural problems in the appeal. A second is to identify and clarify the main issues being raised on appeal. A third and **primary** purpose is to explore any possibilities there may be for settlement of the case through mediation. **All counsel with their clients are expected to come prepared to address these purposes.** Counsel should have proper authority to make and respond to settlement proposals consistent with their clients' interests. The case, as it now stands on appeal, will be discussed in considerable detail. Counsel addressed are understood to be the lawyer with primary responsibility for the case and on whose advice the client relies.

Since the mediation is scheduled for all day, you will need to bring a lunch.

SASHA A.M. BLAINE, CONFERENCE ATTORNEY

**COURT OF APPEALS OF OHIO
FOURTH DISTRICT COURT OF APPEALS
LOC.R. 22 PREHEARING CONFERENCE PROCEDURES**

Pursuant to App.R. 20 and Loc.R. 22, the Court conducts a prehearing mediation conference to encourage and facilitate the settlement and resolution of civil and administrative appeals. The conferences afford litigants the opportunity to candidly evaluate their cases with an informed neutral and to explore the possibilities for voluntary resolution of the litigation. The following are some answers to commonly asked questions about the procedure:

How are cases selected for prehearing mediation conferences? All civil and administrative appeals are eligible for mediation. Cases are selected by the Court, but counsel may also confidentially request a prehearing conference. The Court may grant these requests at its discretion.

How are counsel advised that their appeal has been selected for a prehearing mediation conference? Counsel receive a Notice of Loc.R. 22 Conference advising them of the date and time of the conference, whether it is to be held by telephone or in person, and where it will be held if in person.

Why are conferences scheduled shortly after the notice of appeal is filed? Loc.R. 22 conferences are held shortly after the notice of appeal is filed so that resolution of the appeal or settlement of the case can be explored prior to the parties incurring further cost and expense on appeal.

Are the times on appeal suspended upon notice of a Loc.R. 22 conference? No. The times on appeal continue running as usual. However, a request for a continuance can be made by written motion or by contacting the administrative counsel or court administrator at (740) 779-6662. The Court may grant the request if it is deemed to be conducive to the mediation process.

What if I have an unavoidable conflict with the scheduled date and time? If you need to reschedule because of a previously scheduled court appearance, planned vacation, or unforeseen emergency, please immediately call the administrative counsel at (740) 779-6662. Alternative dates and times will be provided to you. It is the duty of the rescheduling attorney to contact all other counsel in the case to arrive at a mutually agreeable date and time and then to promptly notify the administrative counsel of the rescheduled date and time.

Is participation in prehearing conferences optional? No. Participation is mandatory.

Must each party's lead attorney attend the conference? Yes. It is critical that each party be represented at the prehearing conference by the attorney who is not only conversant with the case, but is also the attorney on whose advice the client chiefly relies.

Are the parties required to attend the conference? If the notice indicates that client attendance is mandatory, the clients must be present with counsel at the prehearing mediation conference. If clients are not required to attend the initial conference, parties or their designated representatives with full settlement authority shall be available by telephone for the duration of the conference to facilitate settlement discussions. Client participation is encouraged when it will be helpful or conducive to the settlement discussions.

What preparation is required of counsel? Counsel are to consult with their clients prior to the conference and obtain the requisite settlement authority. Care should be taken to include all the necessary “decision makers.” Counsel are to be prepared to fully explore in good faith all options, avenues, and possibilities which might lead to a mutually acceptable resolution of the case. Counsel should also review their factual and legal interests prior to the conference. Discussion of settlement is not necessarily limited to the appeal itself. If settlement of the appeal will not dispose of the entire case or, if related litigation is pending or anticipated in other forums, counsel are encouraged to explore the possibility of a global settlement.

How long do conferences last? On average, the conferences last approximately one hour. However, the administrative counsel will afford counsel and the parties as much time as necessary to accomplish the purposes of the prehearing conference.

What takes place at the prehearing conference? While prehearing conference procedures are official proceedings of the Court, they are conducted in a relatively informal manner. Discussions are typically conversational rather than argumentative. Initially, procedural issues and questions are addressed. The primary substantive issues and anticipated assignments of error are then discussed. Thereafter, resolution is actively explored through the mediation process. The mediation focuses on possible outcomes on appeal, the risks and costs of further litigation, the interests and motivations of the parties, and the potential benefits gained by resolution of the appeal or settlement of the entire case. The administrative counsel typically meets jointly with counsel and the parties and then meets separately with each side in her role as mediator. Settlement options and proposals are thoroughly discussed. Resolution may or may not be reached during the initial conference. Following an initial conference, the administrative counsel typically initiates further discussions by telephone or e-mail, or will schedule follow-up conferences if helpful. By the conclusion of the prehearing conference process, the parties have either reached a resolution or have identified the remaining obstacles and areas of impasse.

What is the role of the administrative counsel in the prehearing conference process? The administrative counsel serves as a neutral and impartial mediator and may perform a variety of roles as may be conducive to the settlement process. She may act as a facilitator, moderator or intermediary. She may also act as a sounding board or a reality check. Typically, she will encourage neutral analysis rather than arguments and accusations. She will assist as needed in the generation of possible options for resolution and encourage collaborative problem-solving in the search for mutually agreeable terms.

Throughout the mediation process, she will maintain the confidences of the parties and make no recommendation to the Court on the merits of the case.

Are pre-hearing conferences confidential? Yes. Pre-hearing conferences are confidential and off the record, unless the parties explicitly agree otherwise.

Do judges of the Court of Appeals know what transpires at prehearing conferences?

No. Any settlement discussions or negotiations which have taken place at a prehearing conference remain confidential and are not revealed to the Court. The prehearing conference process provides appellate counsel and the parties with a confidential and credible, no risk and low cost environment in which counsel and the parties can actively explore options and avenues of resolution which are consistent with the best interest of their clients. If no agreements are reached, the case is absolutely unaffected and those in the decisional process that might follow know nothing about the mediation discussions. The administrative counsel's notes and documents created for settlement purposes will not become part of the Court's file.

How can I best use the Loc.R. 22 conference to benefit my client?

Recognize that the pre-hearing conference procedures provide a short window of opportunity to achieve a favorable outcome consistent with your client's overall interests and risks. While maintaining your role as an advocate, understand that the appellate mediation conference is essentially cooperative rather than adversarial. Take advantage on appeal of the opportunity to talk constructively and confidentially with counsel for the other parties. Listen closely to what the other participants have to say. Try to be as candid as possible without posturing. Be persuasive yet open to persuasion. Keep in mind that rigidly adhering to a predetermined "bottom line" is usually unproductive because your views about the case, based on new insights and information, often change during the course of the mediation process. This may lead to additional and unanticipated avenues and options for resolution and mutual gain.

How can a prehearing conference be requested?

Counsel may confidentially request a pre-hearing conference by calling or writing Court Administrator Sharon A. Maerten-Moore at Fourth District Court of Appeals, 14 South Paint Street, Suite 38, Chillicothe, Ohio 45601, (740) 779-6662. Alternatively, counsel may request a conference by formal motion filed with the Court. If the request is granted, counsel will be notified that a conference has been scheduled.

MEDIATION STATEMENTS

WHAT IS A MEDIATION STATEMENT?

A mediation statement is a short, informal report voluntarily submitted to the mediator in advance of the mediation by a participating party. Its purpose is to educate the mediator on the history, issues, interests, obstacles, and possible solutions likely to surface during the upcoming mediation. The contents are completely confidential and are not revealed to the court or any other party. The decision to submit a mediation statement is entirely voluntary with each party. A mediation statement should rarely exceed five pages in length, and can be much shorter.

WHY SUBMIT A MEDIATION STATEMENT?

The more a mediator understands the dynamics of a case, the better he/she can assist the parties in understanding each other and identifying possible solutions. In short, increased knowledge helps to resolve disputes.

HOW DO I SEND A MEDIATION STATEMENT?

Mediation statements should not be filed, but rather can be mailed, faxed, or e-mailed directly to the attention of the Conference Attorney (mediator) as follows:

Address: Twelfth District Court of Appeals
ATTN: Conference Attorney
1001 Reinartz Blvd.
Middletown, Ohio 45042

Fax: 1-513-425-8772

e-mail: sasha.blaine@twelfth.courts.state.oh.us

All correspondence addressed to the Conference Attorney will be kept strictly confidential and will not be communicated to the judges, staff attorneys, or court administration for any purpose.

WHAT SHOULD A MEDIATION STATEMENT INCLUDE?

1. Background information on the dispute.
2. Any documents directly in dispute (*e.g.*, the contract at issue).
3. Court decisions, party memoranda, and party letters regarding the likely issue(s) on appeal, as well as issues motivating the appeal.
4. A summary of previous settlement negotiations and efforts.
5. The important interests to your client in the dispute.
6. The other parties' interests as you understand them.
7. Particular concerns about confidentiality.
8. Particular concerns about authority to settle the dispute.
9. Perceived obstacles to settlement.
10. Proposed settlement approaches.
11. Any other information that the attorney and/or client believes would be helpful in the mediation process.

Questions about any aspect of the Court's Mediation Program can be addressed by Sasha Blaine, Esq. by calling (513) 425-6609 or emailing sasha.blaine@twelfth.courts.state.oh.us.

MEDIATION TIPS FOR ATTORNEYS

YOUR ROLE IN MEDIATION DIFFERS FROM THAT IN LITIGATION

Most attorneys are most comfortable wearing their litigation “combat helmet.” Mediation, however, is a collaborative process where the parties work together with the goal of finding a mutually agreeable solution. With the confidentiality protections, mediation is short and unique window of opportunity for the parties to quickly reach an outcome that they can control. Mediation results in settlement when the parties are able to find a solution that is better than more litigation.

Successful attorneys in mediation give opening statements that focus on the issues that the parties need to work on together, which is very different from making an argument at a trial. They communicate their clients’ objectives about solving the problem while emphasizing points of commonality and the desire to end the dispute. The successful attorneys know that posturing and aggressiveness are counterproductive in mediation. An attorney who shows a problem-solving attitude will likely find his/her client doing the same, which facilitates settlement.

It can be helpful for attorneys to have this discussion with their clients in advance so that the clients are not taken by surprise when the combat helmet is temporarily removed. The Conference Attorney will typically reinforce that point at the beginning of the mediation. If mediation does not end in a settlement, the attorneys can always put that combat helmets back on.

PREPARE FOR MEDIATION

It’s not as involved as trial preparation, but some advance thinking can dramatically improve the odds of an agreeable result. Determine your client’s underlying interests in the matter. What interests are motivating the other side? Reflect on what has prevented resolution of the case so far. Is there any missing information out there that would be helpful? Be sure to also talk with your client frankly and realistically about the case as it now stands in the Court of Appeals. Clients appreciate aggressiveness and diligence on their behalf, but also respect honesty and candor from their lawyer. Is the time and expense of an appeal the *best* way to achieve a result your client can accept? What will be involved to collect on a judgment after appeal? How significant would the speed, control, certainty, and flexibility of settlement through mediation be for your client? Is this round of litigation certain to end it all? Is there any value to closure of the matter and the peace of mind it would bring?

INCLUDE THE NECESSARY “DECISION MAKERS”

All attorneys think to include the client, but are there any other persons needed for final settlement authority? The most obvious example would be the insurance

adjuster or counsel in a case involving insurance coverage. If these additional people are located outside of reasonable driving distance, check in advance about their participation by telephone to prevent holdups in the mediation process.

SET ASIDE ENOUGH TIME FOR THE PROCESS

Attorneys frequently underestimate the value of allowing a client to “vent” to a third party in their own way. Additionally, discussing the problem, working through the emotional barriers, and exploring settlement options takes time and, to be effective, can’t be hurried. Your natural inclination to “cut to the chase” misses the point of mediation. It’s not unusual for an attorney to see little “progress” for 60-90 minutes only to witness unprecedented strides thereafter. Mediations at the Court of Appeals are generally scheduled for three hours, but occasionally go much longer. Often, the longer ones are the most successful.

DON’T SET A PREDETERMINED AND RIGID “BOTTOM LINE”

Because of the nature of mediation, you will most likely discover new insights, information and ideas that will change the way you think about the case. A predetermined “bottom line” deprives your client of the flexibility needed to benefit from this new influx that mediation is designed to provide. Therefore, to come to mediation “with authority” means to come with a genuinely open mind.

BE ON TIME TO THE MEDIATION

Mediations, while informal, are an official proceeding of the Court of Appeals. Parties should be punctual as they would be to any court proceeding. In mediation, there is also a practical consideration: causing the other party to needlessly wait often stirs up ill feelings that can hinder mediation efforts. You can end up not getting the results you may have otherwise achieved.

MEDIATION DOES NOT AUTOMATICALLY STAY THE DEADLINES

The fact that a case is in mediation with the Court of Appeals does not affect the established scheduling order. However, to keep costs down for the parties (preserving resources that could be better used to resolve the case), the Court will allow the parties to request an extension of a deadline to file the record or brief for the purpose of pursuing resolution through mediation. Such requests can often be made simply by telephoning the Conference Attorney rather than by the usual Loc.R. 10 or 14 written motion. See Loc.R. 22(D) for more details.

“Mediation Tips for Attorneys” includes information and materials from the mediation programs of the First, Sixth, Eighth and Tenth District Courts of Appeals for Ohio and from the Circuit Mediation Offices of the Sixth and Ninth Circuits of the United States Courts of Appeals.

Appellate Mediation FAQs

What cases can be mediated on appeal?

Any appeal from a civil, domestic relations, or juvenile support case, as well as original actions, may be mediated.

Is participation in mediation required?

If a case is selected for mediation, all parties are required to participate.

Who is required to attend the mediation?

All parties and all lead counsel must attend mediation conferences in person. Exceptions to this rule are granted sparingly and only when requested ahead of time or under extraordinary circumstances.

Counsel

Lead counsel is the attorney on whose advice the party primarily relies. Often times when more than one attorney is representing a party, lead counsel may not be the most familiar person with the case (for example, co-counsel or an associate may have handled a pivotal hearing or been primarily responsible for critical discovery). In that event, both lead counsel and the attorney who is most familiar with the case are required to attend the mediation.

An organization as a party

When a party is an organization, such as a municipality or a business, the person who participates for the party at the mediation is expected to have full settlement authority and be knowledgeable about the case. If the person who is most familiar with the case does not and cannot be given full settlement authority, both the person most familiar with the case and someone with full settlement authority are required to participate.

Where are the mediations held?

The mediations are held in person at the Twelfth District Court of Appeals' building located at 1001 Reinartz Blvd., Middletown, Ohio 45042.

Who conducts the mediation conferences?

The Court's Conference Attorney conducts all mediation conferences.

What should attorneys and parties do to prepare for mediation?

Parties and their attorneys required to consult before mediation to discuss settlement authority, goals for resolution, and the merits of the appeal. Parties and their attorneys should also discuss if there are other stakeholders who either need to participate physically or might need to be available by phone during the mediation. A good example is, in a divorce case involving shared parenting, a grandparent or adult sibling who helps transport a minor child to school may need to be consulted about what types of transportation arrangements are feasible.

While Mediation Statements are not required, many parties and attorneys find it helpful to prepare a Mediation Statement in advance to analyze the factual and legal issues of the case, what might happen if the case is remanded (sent back) to the trial court, and what other proceedings may follow the appeal. Mediation Statements can also include other information that the Conference Attorney might not know from reading the filings, but will be relevant in mediation. Mediation Statements can be shared with the other side, or can be shared confidentially with the Conference Attorney only.

What takes place at mediation?

While mediation conferences are official proceedings of the Court, they are very different from court hearings or arguments. During mediation, discussions are typically conversational rather than argumentative, and for good reason: no one will decide a winner or a loser, but rather the parties will decide if they can come up with a better solution than continued litigation. Being able to temporarily discuss the issues in a collaborative, rather than adversarial, manner is the key to making mediation successful.

Initially, procedural issues and questions are often addressed. One common procedural issue is whether the appeal is ready for review, including whether there is a final appealable order, was the appeal filed on time, or other issues that might need to be resolved before the Court can hear the appeal.

Next, the primary substantive issues and anticipated assignments of error (the areas where the appealing party believes the trial court made a mistake) are then discussed. For example, in a divorce case, a substantive issue on appeal might be the calculation of spousal support. The assignment of error related to spousal support would be the specific mistake or mistakes the appealing party believes the trial court made in calculating spousal support, such as whether the trial court erred by imputing income to a spouse who is unemployed or whether the trial court erred in determining the end date of the marriage.

Substantive issues are generally discussed in the context of the appellate standard of review that applies, which is the framework that the Court uses to determine whether the trial court made an error. The standard of review is important to all parties because it effects how likely or unlikely it will be for either party to win on appeal. Some standards of review require that the Court give considerable deference to the trial court's decision. Other standards of review require that the Court review the trial court's decision anew, without giving any deference to what the trial judge concluded. Some standards of review are somewhere in between. Which standard of review applies is not always clear, so the attorneys may discuss the strengths and weaknesses of their position in the alternative.

After that, the parties will actively explore ways to settle the case, focusing on the possible outcomes on appeal; the risks and costs of further litigation; the key interests and leading motivations of the parties; and the potential benefits gained through resolution of the appeal or settlement of the entire case. This often involves the Conference Attorney meeting with each side separately (called "caucusing") to confidentially discuss the issues and come up with ideas for settlement.

Typically, the appellant, the party who filed the appeal, is the one who makes the first offer. The Conference Attorney will take that offer to the appellee, the party defending the appeal, to discuss. Sometimes, the Conference Attorney will meet with the attorneys from each side without the parties to discuss legal issues or clarify what happened in front of the trial court. Regardless of how the mediation progresses, settlement offers and proposals will be discussed thoroughly by all involved.

If the parties reach a settlement, the parties typically draft a settlement agreement memorializing the terms of the deal. Each party and attorney will sign the settlement agreement. Each party and attorney will leave with a copy and the Court will keep an original on file as set forth in the Court's records retention policy. If the parties need to file any paperwork with the trial court, such as revised shared parenting plans or other documents, the parties/their attorneys will be responsible to address that in a timely manner and inform the Court of the progress. Once all of the necessary paperwork is complete and the attorneys have so advised the Conference Attorney, the Court will dismiss the appeal.

If a settlement is not reached at mediation, the Conference Attorney will take one or more of the following actions, depending on the circumstances of the case:

- Set the case for a follow-up mediation;
- Set the case for a follow-up telephone conference;
- Set deadlines for the parties to exchange paperwork and/or information necessary to evaluate any pending settlement offers;
- Set deadlines for status reports and/or exchange of future settlement demands; and/or
- Communicate with the parties and their attorneys by email, phone, or fax throughout the pendency of the appeal.

The goal is that by the end of mediation conference, the parties have either reached a settlement or have identified the remaining obstacles or issues impeding settlement.

Discussion of settlement is not necessarily limited to the appeal itself. If settlement of the appeal will not dispose of the entire case, or, if related litigation is pending or anticipated in other forums, counsel are invited and encouraged to explore the possibility of a global settlement.

How long do mediation conferences last?

The Court typically sets mediation conferences for three hour sessions. Historically, three hours has been needed to fully explore settlement and leave enough time to memorialize the parties' agreement if a resolution is reached. While the Court respects the fact that the parties and their attorneys have other obligations, it is highly recommended that the parties and their attorneys be mindful that sometimes mediation conferences can exceed the three hours and if the mediation is making progress, it might be difficult to regain that momentum if the parties leave the Court without finalizing their agreement.

Sometimes, three hours will not be enough time because the case is complex or the parties want to reach a global settlement of the appeal as well as other, related legal proceedings. If either

party believes that more than three hours is likely necessary, s/he can contact the Conference Attorney to extend the time for the mediation conference.

What happens to the deadlines in the Scheduling Order if the case is mediated?

Referral to mediation does not automatically extend deadlines set in the Court's Scheduling Order for the case. The parties are still required to request any extensions needed before those deadlines occur.

To facilitate mediation related extensions, the parties can request an extension three different ways:

1. File a Motion for an Extension of Time (Mediation) with the Clerk of Courts;
2. Call the Conference Attorney at (513) 425-6609; or
3. email the Conference Attorney.

Regardless of how the party chooses to request an extension, the party is required to contact opposing counsel for all other parties to determine if the other parties will consent to the extension or plan to object.

Do the judges or court staff know what happens in mediation?

No. What the parties discuss in mediation is confidential and privileged, subject only to very limited exceptions as stated in O.R.C. § 2710.03 and Loc.R. 22. The judges, court staff, and court administration do not know anything about what the parties discussed, who offered what, or how the parties analyzed the case. If the parties do not reach a settlement, the case proceeds as if the mediation had never occurred. The Court takes mediation confidentiality very seriously because it is a big part of what makes appellate mediation a low cost, no risk way to explore alternatives to the expense and stress of pursuing an appeal.

How do I request mediation?

A party or attorney has three different ways to request mediation:

1. File a Motion for Referral to Mediation;
2. Call the Conference Attorney at (513) 425-6609; or
3. email the Conference Attorney.

Because a motion, once filed, becomes a public record, a Motion for Referral to Mediation is not confidential. If the party or attorney wishes the request to remain confidential, the party or attorney is advised to email the Conference Attorney and indicate in the subject line "Confidential Request for Mediation."

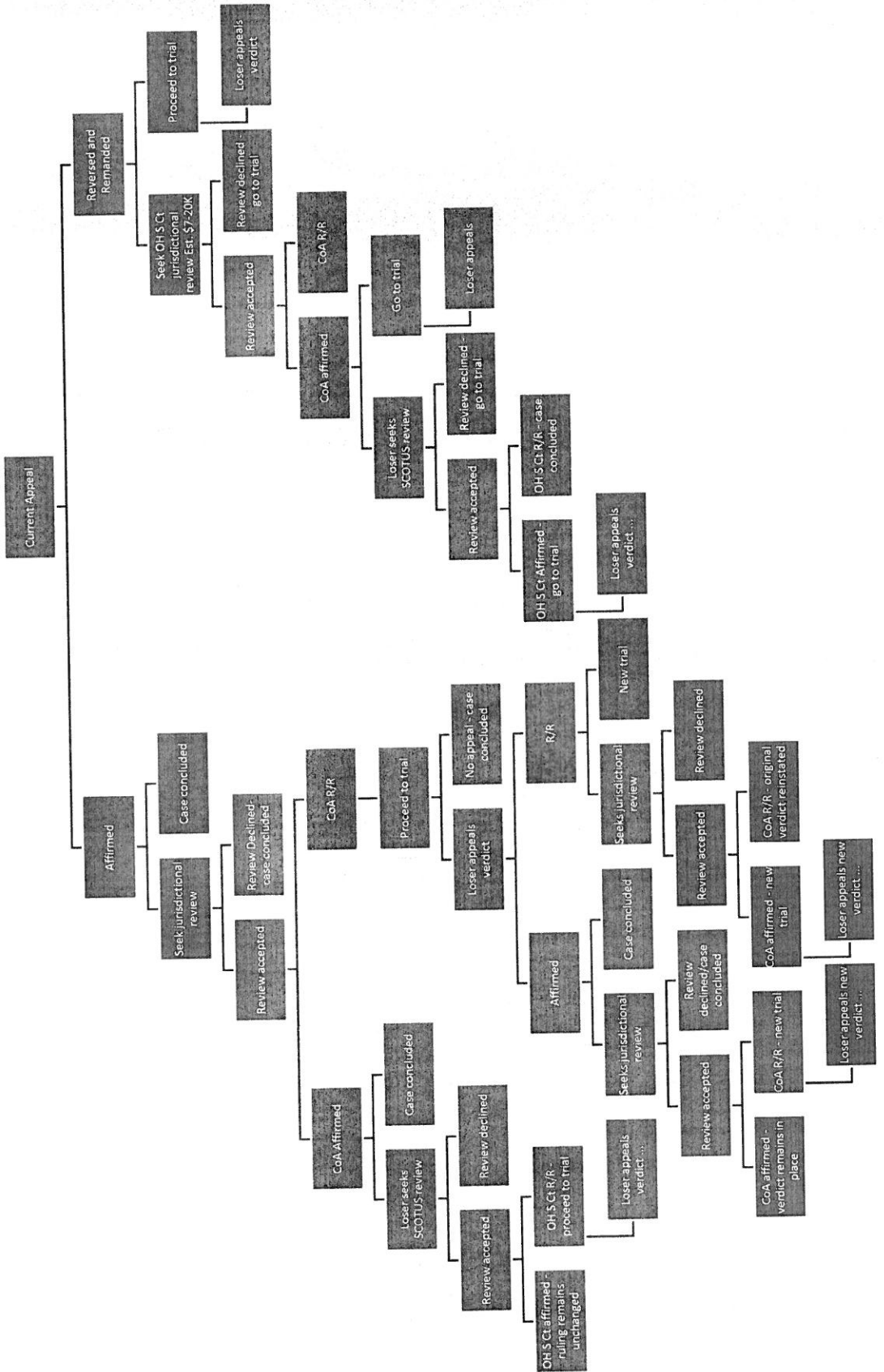
I have a conflict with the mediation date. What should I do?

Contact the other party/ies or, if represented by counsel, the attorney/ies for the other party/ies to discuss some dates when everyone required to participate in mediation could attend. Once alternative dates have been identified, call or email the Conference Attorney to request that the

mediation be rescheduled. Please indicate which parties have been consulted and which alternative dates have been identified.

If I am representing myself or cannot find an attorney, can I still participate in mediation?

Yes, but all parties are strongly encouraged to seek legal representation for all aspects of the appeal, including mediation. The Conference Attorney does not represent any party and cannot give legal advice, even if the party is without an attorney. If a party needs additional help finding an attorney, he or she should call or email the Conference Attorney as soon as possible.



Motivations in Mediation

Check all that apply

MOTIVATION	ANT	ANT Atty	LEE	LEE Atty		
Money						
Community reputation						
Credit/Borrowing power						
Career						
"the Principle"						
Control						
Social media profile						
Lost time						
Fear of change						
Hurt feelings						
Vindication						
Religion/Ideology						
Needs of third parties						
Obligations to third parties						
Personal autonomy						
Distrust/mistrust						
View of court system						
Billing structure for litigation						
Approval of third parties						
Self-esteem						
Business concerns						
Age						
Need to be "heard"						
Lifestyle						
Certainty/Finality						
Education						
Safety						
Shame/Blame ("AME" Game)						
Family dynamics						
Future conflict avoidance						
Sunk costs						
Related litigation						
Cultural views of negotiation						
Personal physical limitations						
False/unrealistic expectations						
Revenge						
Competitiveness						
Confidentiality						
Malpractice concerns						
Procrastination						
Better "test case" possible						

Settlement Agreement and Release

The parties, Plaintiff-Appellee Aaron Burr ("Burr") and Defendant-Appellant Alexander Hamilton ("Hamilton") (collectively as "the Parties"), hereby agree to settle the appellate case pending before the Ohio Twelfth District Court of Appeals captioned as *Burr v. Hamilton*, Weehawken CA1804-07-049 ("the Appeal") and the trial court case pending in the Weehaken County, Ohio Common Pleas Court, General Division, captioned as *Burr v. Hamilton*, 1800 CV 1600 ("the Trial Court case") upon the following terms:

1. Burr will:

2. Hamilton will:

Settlement Agreement and Release

3. The Appeal:

4. Trial court case:

5. The contents of this Agreement will remain confidential to the extent allowed by law, except as necessary to enforce this Agreement. Should enforcement become necessary, the party seeking enforcement will file any enforcement motion or action in the Trial Court.

6. All parties have had the opportunity to seek legal advice from retained counsel of their choosing before entering this Agreement or have decided to proceed without legal advice.

Offering Party

Date/time _____

Counsel

Date/time _____

Accepting Party

Date/time _____

Counsel

Date/time _____

Settlement Agreement and Release

The parties, Plaintiff-Appellee Aaron Burr ("Burr") and Defendant-Appellant Alexander Hamilton ("Hamilton") (collectively as "the Parties"), hereby agree to settle the appellate case pending before the Ohio Twelfth District Court of Appeals captioned as *Burr v. Hamilton*, Weehawken CA1804-07-049 ("the Appeal") and the trial court case pending in the Weehaken County, Ohio Common Pleas Court, General Division, captioned as *Burr v. Hamilton*, 1800 CV 1600 ("the Trial Court case") upon the following terms:

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Offering Party

Date/time _____

Counsel

Date/time _____

Accepting Party

Date/time _____

Counsel

Date/time _____

IN THE _____ COUNTY COMMON PLEAS COURT
GENERAL DIVISION

_____,
Plaintiff/Appell _____,
v.
_____, et al.,
Defendant/Appell _____.

: CASE NO. _____
:
: JUDGE _____
:
:
: AGREED MOTION TO VACATE
: JUDGMENT PURSUANT TO CIV. R.
: 60(B)(4)
:
:
:
:
:

Now come Plaintiff _____ and Defendant _____, et al. (“the Parties”), and jointly move this Court to vacate the [NAME OF JUDGMENT ENTRY] (“Judgment Entry”) entered on [DATE] pursuant to Civ. R. 60(B)(4). The parties respectfully request that the Judgment Entry be vacated because the parties have reached a settlement that will resolve all outstanding issues in this case, and as such, the Judgment Entry should no longer have prospective effect. An Agreed Judgment Entry granting this Motion and dismissing the case is attached as Exhibit I for this Court’s consideration.

There is currently an appeal pending before the Twelfth District Court of Appeals [and settlement reached as a result of the Court of Appeals’ Mediation Program]. Contemporaneously with the filing of this Agreed Motion, counsel have requested a limited remand from the Court of

Commented [SAB1]: Most parties find it helpful to mention to the trial court that our program facilitated settlement, so most use this optional language.

Appeals pursuant to Loc. R. 22 to allow this Court jurisdiction to consider the Agreed Judgment Entry.

Respectfully submitted,

LAW FIRM

LAW FIRM

COUNSEL
ADDRESS
Phone:
Fax:
Email:
Attorneys for _____

COUNSEL
ADDRESS
Phone:
Fax:
Email:
Attorneys for _____

CERTIFICATE OF SERVICE

I certify that the foregoing Agreed Motion to Vacate was served via ordinary U.S. mail, postage prepaid, this ____ day of _____, 20--, upon the following:

REMAINING PARTIES, if any

Counsel for _____