

Mediation in Ohio Appellate Courts: Keeping it Civil, Making it Successful

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THE SUPREME COURT *of* OHIO **2020**
Dispute Resolution
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Which Districts Have Appellate Mediation?

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

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



Recent Changes to Sup.R. 16

- Pursuant to Sup.R. 16.21, any court using mediation must have a local rule that:
 - Incorporates R.C. 2710 by reference (Ohio Uniform Mediation Act)
 - Identifies types of cases eligible for mediation
 - Addresses confidentiality
 - Addresses prohibitions regarding domestic violence prosecution and adjudication
 - Establishes procedures for encouraging appropriate referrals to legal counsel and other support services for all parties, including victims and suspected victims of domestic violence
 - Addresses any other necessary provisions

Preparing for an appellate mediation

1. Review options available at the appellate level.



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Preparing for an appellate mediation

- 2. Prepare your client.
 - Expectations
 - Emotions
 - Time-Frame
 - Expense
 - Alternatives

Preparing for an appellate mediation

- 3. Consider expectations and interests of opposing side.



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Preparing for an appellate mediation

- 4. Consider where and at which stage of the appeal the mediation will take place.
 - Are these options negotiable?

Appellate Mediation with the Pro Se Individual

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Should you mediate with pro se parties?

- Don't mediate
- Mediate
- Mediate but encourage representation

Pre-Mediation Groundwork

- Pre-screen
- Setting
- Discussion with pro se party
- Discussion with opposing counsel (if any)

Mediation Strategy

- Don't use legal terminology
- Describe mediation process in detail
- Remind pro se party you cannot give legal advice
- Focus on issues at hand
- Use caucuses wisely
- Effective listening
- Effective conclusion

Model Standards of Conduct for Mediators (2005)

- Adopted by American Arbitration Association, American Bar Association, and Association for Conflict Resolution

Standard II.B:

- “A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.”

Standard VI.A.5:

- “Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. A mediator may provide the information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.”

Standard VI.A:

- “A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.”

Standard VI.A.10:

- “If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party’s capacity to comprehend, participate and exercise self-determination.”

Settlement Agreement

- Do you help the parties draft an agreement?
- Have blank settlement forms available for parties to complete.
- Make sure non-drafting party reviews before signing.
- Opportunity to have agreement reviewed by counsel before signing.

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