

## TYPES OF CASES ELIGIBLE FOR MEDIATION

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Most civil cases that have been directly appealed from a trial court to the Supreme Court will be eligible for mediation.

### *The following cases are not eligible:*

- criminal cases;
- family court appeals;
- petitions for extraordinary relief, including prerogative writs;
- applications for post-conviction relief;
- petitions for habeas corpus;
- prisoner litigation;
- pro se cases; and
- juvenile cases.

The Court encourages parties in any appealed civil case to request participation in the program on a voluntary basis.

## THE MEDIATION PROCESS IS CONFIDENTIAL

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Any statements made as well as any documents submitted in furtherance of mediation will be confidential. The only portion of the mediation process that is public is the fact that mediation took place and whether the case has been settled.

## MEDIATION BENEFITS ALL PARTIES

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- Saves money and time
- Allows parties to control the outcome
- Ensures compliance
- Eliminates the risk of unfavorable rulings; and
- Inspires creative and realistic solutions

## IS PARTICIPATION MANDATORY?

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Participation in eligible appellate mediation sessions is mandatory, but settlement is voluntary.

## Contact Information

### APPELLATE MEDIATION PROGRAM

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#### Office of Alternative Dispute Resolution

Rhode Island Supreme Court  
250 Benefit Street, Room 703  
Providence, Rhode Island 02903  
[www.courts.ri.gov](http://www.courts.ri.gov)

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The following forms and documents are available on our website at [www.courts.ri.gov/appellatemediationprogram](http://www.courts.ri.gov/appellatemediationprogram):

- Appellate Mediation Program Evaluation Form;
- Part I: Mediation Information Form and Part II: Confidential Mediation Statement and Authorization;
- Mediation Tip Sheet for Counsel;
- Mediation Tip Sheet for Clients; and
- Spanish Interpretation Mediation Tip Sheet for Clients.

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*The Supreme Court is a court of last resort and is the final interpreter of state law. The Supreme Court has final jurisdiction over questions of law and equity, supervisory powers over other state courts, and general advisory responsibility to the Legislative and Executive branches of state government concerning the constitutionality of state laws. Chief Justice Paul A. Suttell serves as the executive head of the state judicial system.*



## Appellate Mediation Program

## WHAT IS THE APPELLATE MEDIATION PROGRAM?

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The Appellate Mediation Program is an initiative of the Supreme Court bench and is governed by Article I, Rule 35 of the Supreme Court Rules of Appellate Procedure. Mediation and other innovative methods of alternative dispute resolution allow litigants to participate without the expense, time, and contention of continued litigation. Mediation does not involve the rendering of a decision by the mediator.

## WHAT FORMS DO I NEED TO FILE?

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All parties (either through trial counsel or appellate counsel) are responsible for filing the Mediation Eligibility Form and the Confidential Mediation Statement in order for the Appellate Mediation Program to determine eligibility and appropriateness of the case for mediation.

## WHERE ARE THE FORMS LOCATED?

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Mediation Statement Parts I and II are located online at [www.courts.ri.gov](http://www.courts.ri.gov) and should be electronically filed through the Court's File and Serve website. See forms for details. Forms should not be filed at the Clerk's office.

## WHEN DO I FILE THE FORMS?

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- Within twenty (20) days of the date of the Notice of Eligibility and Case Number which will be sent to all parties by the Appellate Mediation Program's clerk, all parties are required to electronically file a Part I: Mediation Eligibility Form and a Part II: Confidential Mediation Statement and Authorization Form. The mediation case number will be indicated on the Notice.
- After reviewing the forms and determining whether a matter is eligible and appropriate, the Appellate Mediation Program will attempt to schedule mediation sessions within thirty (30) days. Mediation sessions are scheduled to last at least one hour with additional sessions scheduled as needed.

- Mediation sessions are allowed to be rescheduled only once for good cause. Requests for rescheduling must be made at least seven (7) days before the scheduled session.

## HOW SHOULD I PREPARE FOR MEDIATION?

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- Carefully read our tip sheets for counsel and client to understand the process.
- Complete the mediation forms with direct and honest statements of facts and issues with the final goal of creatively resolving the dispute outside of the litigation process.
- Understand and discuss your client's priorities, underlying interests, anticipated results, and any emotional issues that may need to be addressed to progress the matter towards resolution.
- Candidly assess the respective strengths and weaknesses of both sides' positions and formulate your client's best and worst case scenarios.
- Determine the costs and time commitment of continued litigation and assess your client's ability and willingness to fund continued litigation in light of all risks present.
- Be prepared to suggest and consider multiple approaches to the problem that gave rise to the dispute. Imagine possible creative solutions and assist in brain-storming and problem-solving outside of the context of a legal determination.
- Be prepared to negotiate in good faith and express your views on your clients' underlying interests and motivation, and obtain advance authority from your client to make any commitments as may reasonably be anticipated as a result of mediation.

## WHO WILL CONDUCT THE MEDIATION?

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- Presently, retired justices serve as mediators at no cost to the state. As the program progresses, other qualified mediators may be approved and added.
- The mediator-justice does not adjudicate the matter, issue a legal opinion or render a decision, but assists

the parties in coming to a mutually agreeable solution by facilitating communication between the parties, assisting them in identifying their interests and needs, and aiding in the negotiation process. A mediator-justice who conducts a mediation that does not result in a resolution will not participate in the subsequent appeal.

## WILL MEDIATION DELAY THE APPEAL?

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No. Because mediation typically occurs before transcripts are ordered, the time period for ordering a transcript in cases eligible for mediation will be extended to sixty (60) days from the filing of the notice of appeal. Otherwise the usual timeline for an appeal applies.

## ARE THERE ANY SANCTIONS FOR FAILURE TO COMPLY?

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- Yes. Failing to file mediation forms within twenty (20) days may subject the delinquent parties to sanctions.
- Sanctions may be imposed upon any party or counsel for failing to abide by Rule 35, including the participation, documentation, attendance, and confidentiality requirements.

## WHAT HAPPENS AFTER MEDIATION?

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If mediation is successful, the parties will be asked to finalize the settlement and withdraw the appeal. If not, the case proceeds according to normal appellate procedure.

## WHEN WAS THIS PROGRAM ENACTED?

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Effective October 1, 2003, the Appellate Mediation Program was implemented by Provisional Rule A of the Supreme Court Rules of Appellate Procedure.