

POLICIES AND PRACTICES

Since 1995, the Court of Appeals has operated an Appellate Settlement Conference Program. The program rules are found in Rule 15.05 of the Oregon Rules of Appellate Procedure.

In brief, the settlement program works as follows: After a notice of appeal has been filed, the Appellate Court Records Section will assign a case number to the appeal and review the notice for jurisdictional requirements. Once it is determined that the jurisdictional requirements have been met, the records section will refer certain designated cases to the program as a matter of course. These designated cases currently include general civil, probate, domestic relations, and workers' compensation appeals. These appeals are part of the mandatory mediation component of the program, and the program generally will accept the referrals and assign the appeals to the program's mediation process. However, appeals involving stalking or restraining orders, and appeals involving *pro se* parties are not referred to the program, and are excluded from the mandatory mediation program.

Appeals that fall into the mandatory component of the program still are screened for appropriateness of mediation. If there is a compelling reason why mediation should not be ordered, the appeal will not be assigned to mediation, and may be removed from the program and reactivated. However, many of these appeals go through some type of informal mediation process before reactivation.

At any time during the appellate process, the court may refer any appeal to the program on its own motion. Appeals referred to the program by the court are

automatically accepted and assigned to mediation under the mandatory component of the program. Court referrals generally are not screened.

For any other appeal, a party or parties may request referral to the program at any time during the appellate process. If the request comes from only one party, and is made before briefing and the case is in one of the designated categories, it generally will be accepted by the program and assigned to the mandatory mediation component of the program. In all other appeals, and at any time during the appellate process, the parties must join in the request. These referrals are considered "opt-in" cases, and are part of the voluntary component of the mediation program. Opt-in cases are investigated for appropriateness of mediation, availability of program resources, and court needs. If it meets those criteria, the appeal may be accepted into the program and assigned to the mediation process.

Once an appeal is accepted into the program, other than by court referral, a settlement conference statement form is sent to the parties. Appellants and cross-appellants (or petitioners and cross-petitioners) are required to complete and return the form within 10 days from the date on the form. If parties are unable to complete the form within the designated time period, they should contact the program director and request an extension of time to submit the form. Respondents are not required to submit the form, but they are encouraged to do so. However, submission of the form is not required if the appeal already has been briefed. When the program receives the form, program staff will conduct an in-depth screening to determine how it may assist the parties in reaching a resolution. This assistance involves many forms, including but not limited to:

helping the attorneys and parties resolve the matter among themselves without a formal mediation; providing assistance to attorneys who want to hire a private mediator; assigning a program neutral to mediate the appeal, etc.

When a case has been assigned to the program for mediation, the court holds the preparation of the transcript and record, as well as briefing, in abeyance for a period of 120 days from the date of notice of the assignment of the case to the program. However, if the parties contact the program director and join in a request for a shorter initial abeyance period, the program director may allow a shorter abeyance period. If the parties need additional time to conclude settlement negotiations--usually to prepare settlement documents--they may request an extension of the abeyance from the program director. If the case is removed from the program for any reason, the appeal is reactivated and the parties will be notified of the due date for the next appellate event.

When an appeal proceeds to mediation, the program director assigns a mediator or "neutral" to the matter. Typically, the program director discusses any potential conflicts the neutral may have before formally assigning him or her to the matter. If the parties request a particular neutral, the director will generally attempt to accommodate the request. If the program director assigns a neutral, and one or both of the parties have a conflict with the neutral, the party or parties may request the program director to remove the neutral assigned to their case. The request must state the reason for the request and must be made before the first scheduled settlement conference (or "mediation") date and as soon as practicable after receiving the notice designating the neutral. If the program director excuses the first assigned neutral, the director will assign a different neutral to

mediate the matter, and most likely will need to reschedule the mediation.

Neutrals are retired judges and experienced practitioners who have completed a mediation training program that the program conducts from time to time. On occasion, a sitting judge or person with specific subject matter expertise may serve as a neutral, even though they have not participated in the program's specific training. Once a case has been assigned to a neutral, program staff will provide him or her with copies of the settlement conference statement forms, the notice of appeal, and the order or judgment being appealed. The neutral may require the parties to submit additional materials as well. The materials that the parties submit to the neutral are not treated as confidential unless the parties mark them as such. These materials shall not be subject to disclosure, except as the law may require or as the parties and the supervising judge may all agree.

A party or person with actual authority to settle the case must be present at the settlement conference unless that person's absence or appearance through technological means is approved prior to the conference by the program director. In cases where the party, person, or group of persons with actual authority to settle is excused from attending, a person with actual authority to recommend settlement must be present.

Mediation sessions usually last up to five hours. More complex matters may take additional time or sessions. Program settlement conferences are subject to ORS 36.210 to 36.238. (Note: The proposed Amendment to ORAP 15.05 noted below on this website clarifies when confidentiality commences and terminates.) If a settlement is reached, however, the terms of the settlement generally are not considered confidential unless the parties agree to confidentiality.

The materials that the parties submit to the neutral do not become part of the court record on appeal. The program maintains separate files from the files maintained by the records section and Court of Appeals. The program maintains those files, and later destroys them, pursuant to the Oregon Judicial Department's records retention policy.