

Frequently Asked Questions **About Appellate Mediation at the D.C. Court of Appeals**

What is mediation?

The mediation process at the Court of Appeals is an informal, confidential process in which the parties to an appeal work with an impartial mediator, trained and selected by the court, to assist them in reaching a negotiated resolution of their case. The mediator's role is to help clarify communication among the participants and assist them in understanding their options. If settlement is not possible, the mediator may help the parties to streamline the appeal by clarifying or eliminating issues that will be litigated in the appeal.

The parties, their attorneys and other persons with settlement authority will meet with the mediator for one or more sessions. Mediation sessions will generally begin with a joint session that includes all participants. After the joint session, the mediator will usually meet separately, or caucus, with each party. All participants are able to participate freely in the joint session and caucuses to the extent they are comfortable doing so. Most mediation sessions are conducted in person, although in certain circumstances parties may be permitted to participate by telephone.

It is entirely up to the parties to decide whether and how the case will be settled. The mediator does not render a decision or order a settlement. If the parties do not reach an agreement, the case will be decided by the Court.

What are the benefits of mediation?

Appeals can be expensive and the appellate process can be lengthy. If parties are able to resolve the appeal in mediation before they are required to spend additional financial and emotional resources pursuing an appeal, they can save time and money, and avoid the anxiety generated by continuing litigation.

Litigation always involves some degree of risk to the parties because they are giving up control of their dispute and handing control over to the court. Mediation can reduce this risk by affording parties the opportunity to

maintain maximum control over the outcome of their case. The parties will decide how their dispute will be resolved.

The flexibility offered by the mediation process gives parties the opportunity to craft a resolution that may not be available if the parties proceed with the appellate process. Thus, agreements reached in mediation may be more comprehensive, creative and satisfying to the parties than what might result should the court render a decision.

What types of cases are eligible for mediation?

Civil cases where all parties are represented by counsel are eligible for mediation, including probate cases, marital property and child custody cases, and administrative appeals. Civil cases that are not eligible for mediation are matters from the juvenile court; cases involving attorney licensing, the unauthorized practice of law, domestic violence, child abuse and neglect, termination of parental rights, adoption and the guardianship of minors. Additionally, criminal cases are not eligible for mediation.

Are pro se cases, i.e. cases where at least one party is not represented by counsel, eligible for mediation?

No, to be eligible for mediation all parties must be represented by counsel.

Is mediation in the D. C. Court of Appeals voluntary?

Mediation is voluntary in the respect that the parties have the power to decide whether to settle the appeal and the underlying dispute.

However, the decision as to whether a party will participate in the mediation process is not voluntary. Although the attorneys for the parties to an appeal are often consulted, the decision as to whether a case is scheduled for mediation rests with the Court.

Once a case is scheduled for mediation, parties are required to attend the mediation session. It is expected that parties will participate in the process in good faith and are encouraged to use the time they spend in a mediation session productively.

Who must attend the mediation?

All parties, counsel, and any non-party who has authority to resolve the case must be present at the mediation session. Sanctions may be imposed by the Court if a party or counsel does not attend a scheduled mediation session unless they have been excused by mediation program staff in advance of the mediation.

Is the mediation process confidential?

Except as provided by statute, the mediator, participants in the mediation and Mediation Program staff are required to keep information relating to the mediation confidential. Participants may also share information with persons who are directly or indirectly a participant in the negotiations.

The only information that the mediator and mediation program staff may share with the court is limited to: whether mediation occurred or was terminated; whether a settlement was reached; who attended the mediation; and information contained in a written settlement agreement signed by all parties to the agreement.

Additionally, the mediator may disclose information shared during a mediation that indicates abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting such individuals from such mistreatment.

How does having your case selected for mediation affect the briefing schedule?

In most cases selected for mediation, the appellate process deadlines, such as the obligation to order the transcript and file briefs, will be put on hold until the mediation process has concluded. If the case does not settle in mediation, the appellate deadlines will start again.

Can parties or attorneys request mediation?

Yes, if the case type is one that is eligible for mediation. The request can be made by contacting the Mediation Program Coordinator, Jennifer M. Gartlan, at 202-879-9936 or mediation@dcapeals.gov.

May litigants select the mediator who will mediate their case?

The mediator is selected by the Court based on the circumstances of the individual case and the expertise of the mediator.

Is there a fee for mediation?

No, the mediation program is a service offered by the court at no charge to the participants.

Where are mediations held?

Unless otherwise directed, mediations are held at 510 4th St. N.W., 2nd Floor, Washington, D.C. 20001