

PURSUANT TO RULE 27(F) OF THE MISSISSIPPI RULES OF APPELLATE PROCEDURE,
THE RULES COMMITTEE ON CIVIL PRACTICE AND PROCEDURE SEEKS COMMENTS
FROM THE BENCH, THE BAR AND THE PUBLIC ON THE PROPOSED

VOLUNTARY APPELLATE MEDIATION PILOT PROGRAM

SUBMITTED BY THE ADVISORY COMMITTEE ON RULES

On January 19, 2012, the Alternative Dispute Resolution (ADR) Section of the Mississippi Bar filed a Petition for Order Authorizing Program for Appellate Mediation. On August 2, 2012, the ADR Section filed an amendment to its petition. The Rules Committee on Civil Practice and Procedure referred the ADR Section's proposal to the Advisory Committee on Rules. After due consideration, the Advisory Committee on Rules has proposed a voluntary appellate mediation pilot program.

The Advisory Committee on Rules' proposal is set forth below, followed by the ADR Section's petition and amendment.

Comments must be filed with the:

Clerk of the Supreme Court
Gartin Justice Building
Post Office Box 249
Jackson, Mississippi 39205-0249

Deadline: May 2, 2014

**RULE 50. [REDACTED] VOLUNTARY APPELLATE MEDIATION
PILOT PROGRAM¹**

(a) Participation and Purpose. (1) *Participation.* Participation is voluntary. Cases are selected for appellate mediation based on the parties' agreement or an invitation from the appellate mediation coordinator. If at any time an appellate court determines a case is appropriate for mediation, the court may ask the coordinator to invite the parties to participate in this voluntary appellate mediation pilot program.

(2) *Purpose.* The appellate mediation pilot program is designed to provide the parties with a forum and process to consider realistically the possibility of settling all or part of a case, discuss limiting and simplifying the issues on appeal, take actions that may reduce costs, and otherwise aid the speedy and just resolution of the dispute. Time is of the essence to the program, and early scheduling is intended to give parties the chance to settle a case voluntarily and before they incur the major expenses of the appellate process, including preparation of the transcript, transmission of the record, and briefing.

(b) Eligibility. (1) *Eligible Cases.* Except as provided in section (b)(2), all civil matters within the jurisdiction of the Mississippi Supreme Court or the Court of Appeals of the State of Mississippi are eligible for participation in the appellate mediation pilot program if: (1) the appeal is from a final order, and (2) all parties are represented by counsel.

(2) *Ineligible Cases.* The following cases are ineligible: criminal, utility rate, annexation, bond issue, election contest, and public service commission cases; cases in which a statute was held unconstitutional; and proceedings pursuant to the Mississippi Uniform Post-Conviction Collateral Relief Act.

¹ It is anticipated that the appellate mediation coordinator will promulgate forms for use in implementing the pilot program. Useful forms would include: joint motion for stay; proposed order granting stay; mediation case screening form; notice appointing mediator; mediator's report; evaluations; joint motion to dismiss appeal; mediator's termination of mediation and notice to reinstate appeal; and mediator application.

(c) Joint Motion for Stay.

(1) *Filing and Disposition.* When the parties agree to participate in this pilot program, either at their own initiative or after invitation from the mediation coordinator, they must file with the clerk of the Supreme Court and serve on the appellate mediation office a joint motion for stay and a proposed order granting stay. The clerk of the Supreme Court will rule on the motion and enter an order pursuant to MRAP 27(b).

(2) *Service of Order; Effect of Stay.* The appellate mediation coordinator must immediately serve the order on the joint motion for stay on all parties, the trial court clerk, and the court reporter. The appellate process, including preparation and filing of the court reporter's transcript, the clerk's record, and briefs, will be stayed according to with the terms of the order granting stay. If the mediation reaches only a partial resolution or an impasse, the case will be reinstated to the appellate docket and, if necessary, an order lifting stay will be entered.

(3) *Matters Not Stayed.* The time for filing a notice of appeal or cross-appeal is not stayed.

(d) Mediation Case Screening Form. With the joint motion for stay (or within 7 days after) the parties must file a joint mediation case screening form with the appellate mediation office. The purpose of the screening form is to provide basic information to the mediator in advance of the mediation and, if necessary, to assist the mediation coordinator in selecting a suitable mediator.

(1) *Attachments.* The screening form must include the following attachments:

- (A) a copy of the notice of appeal;
- (B) a copy of the complaint and any amendments to the complaint;
- (C) a copy of the order or judgment appealed;
- (D) a copy of the order on any post-judgment motions; and
- (E) a copy of post judgment motions and related briefs, but only if doing so will assist the coordinator in determining the nature of the dispute.

(2) *Agreed Mediator.* The screening form must indicate whether the parties agree to use a specific available appellate mediator. The parties may contact the

mediation coordinator to obtain the roster of appellate mediators, and must contact the agreed mediator to confirm acceptance of the appointment.

(e) Content of Documents Limited. Nothing filed with the appellate mediation coordinator may contain information about the parties' settlement positions or any substantive matter. The only purposes of appellate mediation pilot program filings are to track status, keep statistics, assign an appropriate mediator, and return the case to the ordinary appellate process when mediation does not resolve the case.

(f) Notice Appointing Mediator. Within 3 days after the joint mediation screening form is filed, the mediation coordinator must appoint a mediator and notify the parties. If the parties are unable to agree on a mediator as provided in section (d)(2), the coordinator will select a mediator from the roster and may consider, among other things: the experience of the mediator with the subject matter of case; time constraints; and the convenience of the mediator and the parties.

(g) Deadline. (1) *Generally.* Unless otherwise ordered by the court, the parties and the mediator have 60 days after entry of the order granting stay to complete mediation and file with the appellate mediation coordinator a mediator's report and evaluations. If the mediation is not completed within 60 days of the order granting stay, mediation is deemed at an impasse, unless an extension is granted pursuant to subsection (g)(2).

(2) *Extension.* Before expiration of the 60-day deadline, the mediator may request that the parties seek an extension of time if the mediator believes additional time for mediation would be productive. The mediator must send a confirmation letter to all counsel, copied to the appellate mediation coordinator.

(h) Time and Place of Mediation. The mediator will set the time and place of any mediation session at a location that is conducive to discussion and that secures confidentiality. Any request to reschedule a mediation session must be made directly to the mediator, not to the appellate mediation coordinator.

(i) Attendance at Mediation Session. Mediation by telephone conferencing or other audio/visual means may be used if permitted by the mediator in writing. At each mediation session, the following persons must be physically present or, if the mediator permits, otherwise reasonably available to authorize settlement:

- (1) counsel of record;
- (2) the party or a representative who has full authority to settle without further consultation;
- (3) a representative of the insurance carrier for any insured party who has full authority to settle (although insurance representatives are permitted to consult with their superiors by telephone or other electronic means to obtain additional settlement authority); and
- (4) for a governmental or other entity that makes settlement decisions collectively, the presence or availability requirement may be satisfied by a representative authorized to negotiate on behalf of that entity and make recommendations to it concerning settlement.

(j) Submission of Mediation Statement and Documents. The mediator may require each party to submit a detailed, confidential mediation statement. The mediation statement, which is not a brief, must include:

- (1) a short recitation of the facts established to the satisfaction of the factfinder;
- (2) the history of any efforts to settle the case, including any offers or demands (but excluding offers and demands from any previous mediation);
- (3) a statement of the issue or issues on appeal and the manner in which each was preserved;
- (4) a statement of the standard of review applicable to each issue.

The mediation statement may also include:

- (5) a summary of the party's legal positions and a candid assessment of their respective strengths and weaknesses;
- (6) the present posture of the appeal, including any matters pending in the trial court or related litigation;

- (7) any recent developments that may impact the resolution of the appeal;
- (8) identification of any person or counsel the party believes should be directly involved in the settlement discussions;
- (9) a description of any sensitive issue that may not be apparent from the court records, but that may influence the settlement negotiations;
- (10) the nature and extent of the relationship between the parties or counsel;
- (11) priority of interests;
- (12) any suggested approach for the mediator to take in an attempt to settle the appeal (for example, sequencing of issues, or “problems” to be addressed);
- (13) suggested creative solutions;
- (14) necessary terms in any settlement;
- (15) concerns about confidentiality;
- (16) limitations in counsel's authority to make commitments on behalf of the client; and
- (17) any additional information needed to settle the case and whether it should be provided before the mediation.

Mediation statements are confidential. (See section (n)). Copies of mediation statements must be sent directly to the mediator *only*; they must not be served on opposing counsel, the mediation coordinator, or the clerk's office of any court, and cannot be included in the record on appeal.

(k) Conduct of Mediation. Although mediation sessions are relatively informal, they must be conducted with the dignity due court-related proceedings. Mediation is nonbinding, so no settlement can be reached unless all parties agree. The mediator should begin the mediation by describing the mediation process, discussing confidentiality, and inquiring whether any procedural questions or problems can be resolved by agreement. The parties

and the mediator may then discuss, either jointly or separately, and in no particular order, the following topics:

- (1) the legal issues and the appellate court's decision-making process regarding these issues (e.g., preservation of error, waiver, standards of review, etc.);
- (2) the history of any efforts to settle the case;
- (3) the parties' underlying interests, preferences, motivations, and assumptions, and any new information or other changes that may have occurred since the trial court's decision;
- (4) future events, based on the various possible outcomes of the appeal;
- (5) how resolution of the appeal impacts the underlying problem;
- (6) cost-benefit and time considerations; and
- (7) any possible procedural alternatives (e.g., reversal, vacatur, remand, remittitur etc.).

The discussion is not limited to these topics and, because each appeal has its own circumstances, will vary considerably. The mediator should attempt to generate offers and counteroffers and may have several follow-up mediation sessions, in person or by telephone or other electronic means, until the appeal is settled or it is determined that it will not settle and the mediation is at an impasse. Because appellate mediation is based on the principles of self-determination by the parties and the impartiality of the mediator, the mediator may apply the facilitative model of mediation.

(l) No Authority to Impose Sanctions. Neither the mediator nor the appellate mediation coordinator has the authority to impose sanctions. If, however, a party refuses to attend a mediation session, unreasonably delays the scheduling of mediation, or otherwise unreasonably impedes the conduct of the mediation, the mediator may declare an impasse.

(m) Completion of the Mediation Process. (1) Report. Within seven days after the mediation has concluded, the mediator must file with the appellate mediation coordinator a mediator's report. The report must indicate whether and to what extent any agreement is reached. If a partial or final agreement is

reached, the mediator must attach a copy of the agreement unless the agreement provides otherwise.

(2) *Resumption of Deadlines.* Unless a full and final settlement is reached, all appellate duties and deadlines will resume on the earlier of the expiration of the order granting stay or the date of any order lifting stay. The parties, if necessary, may seek to extend the mediation time to complete settlement agreement terms.

(3) *Dismissal.* Dismissal of the appeal will be governed the Mississippi Rules of Appellate Procedure. When the mediation results in a partial or full resolution of the appeal, the parties must file a joint motion to dismiss appeal after mediation with the clerk of the Supreme Court. The motion to dismiss should address the following:

(A) whether the dismissal pertains to all parties and claims on appeal;

(B) whether the case should be remanded to the trial court for further proceedings in conformance with the settlement agreement; and

(C) whether the parties are to bear their own costs or whether the agreement provides that costs are to be apportioned otherwise.

(3) *Impasse; Termination of Mediation and Notice to Reinstatement Appeal.* The mediator may declare an impasse and terminate the mediation process at any time if, in mediator's opinion, further attempts at mediation would be unproductive. If mediation is terminated without the parties' reaching an agreement, the appeal will be reinstated on the appellate docket and the stay lifted. Within 7 days after the stay expires or is lifted, the appellant must make satisfactory arrangements with the court reporter and trial court clerk for preparation of the transcript and record on appeal.

(4) *Evaluations.* Evaluations should be completed by the mediator, the attorneys, and the parties - preferably immediately after the conclusion of the mediation session. The mediator will distribute evaluation forms to parties and counsel inviting their candid responses about the effectiveness of the appellate mediation pilot program. If completed at the conclusion of the mediation, the evaluations may be given in a sealed envelope to the mediator; if completed after leaving the mediation, they may be mailed directly to the mediation coordinator within 7 days.

(n) **Confidentiality.** Except as otherwise required by law, all proceedings and matters related to mediation are confidential, are not subject to disclosure, and may not be used as evidence in any judicial or administrative proceeding. These rules of confidentiality apply to all cases mediated by an appellate mediator and are intended to be enforced strictly. As a result, and among other things --

(1) All information disclosed in the course of screening for mediation, referral to mediation, and mediation, including oral, documentary, or electronic information, is confidential and must not be divulged by anyone involved in the mediation program or in attendance at the mediation except as permitted by this Rule 50, by statute, or by the Mississippi Rules of Appellate Procedure. The phrase, "information disclosed in the course of screening for mediation, referral to mediation, and mediation," includes, but is not limited to:

(A) all statements, disclosures, admissions, or other communications of any kind – verbal, written, electronic or otherwise – made by or on behalf of any party, attorney, mediator or participant;

(B) views expressed or suggestions made by any party with respect to a possible settlement of the dispute;

(C) proposals made or views expressed by the mediator;

(D) the fact that any party had or had not indicated a willingness to accept a proposal for settlement made by the mediator; and

(E) all records, reports, or other documents received by the mediator.

(2) No mediator, participant, or member of the mediation coordinator's office may be compelled to testify about the mediation or divulge the existence or contents of any document revealed during mediation.

(3) No record of any kind may be made during the mediation. The mediator's notes and the parties' mediation statements (and attachments thereto) may not be filed with any court.

(4) No reference whatever may be made in any appellate motion, brief, or oral argument to the fact that the appeal was mediated or that mediation reached an impasse, except when mediation was partially successful and disclosure is necessary for a complete statement of the case. Counsel must bring this

exception to the attention of opposing counsel and the clerk or the mediation coordinator; failure to do so may result in forfeiture of this exception.

(o) Qualifications of Mediator; Fees. (1) *Approved Appellate Mediator Roster.* The coordinator will maintain a roster of approved appellate mediators. An approved appellate mediator is someone who has submitted a Mediator Application, has been selected by the coordinator, and who:

- (A) is a former justice or judge of an appellate court of this state, or an attorney, in good standing with the Mississippi Bar;
- (B) has indicated a desire to be appointed as a mediator under this Rule;
- (C) is on the Mississippi State Court Mediation Roster;
- (D) has agreed to serve as a mediator *pro bono* pursuant to section (o)(5);
- (E) agrees to adhere to the standards in Part XV of the Court Annexed Mediation Rules for Civil Litigation;
- (F) agrees to be bound by this Rule 50;
- (G) waives any and all claims against the appellate court in connection with the mediation of any court-referred dispute; and
- (H) if an attorney and not a former justice or judge of an appellate court of this state, has successfully completed a six-hour appellate mediation course approved by the coordinator.

(2) *Non-Roster Mediators.* Nothing in this Rule prevents the parties from choosing their own mediator who has submitted a Mediator Application and:

- (A) is in good standing with the licensing board for the profession in which the person practices or, if applicable;
- (B) agrees to adhere to the standards in Part XV of the Court Annexed Mediation Rules for Civil Litigation;
- (C) agrees to be bound by this Rule 50; and

(D) waives any and all claims against the appellate court in connection with the mediation of any court-referred dispute.

(3) *Inability of Mediator to Serve.* If the mediator becomes unwilling or unable to serve after accepting an case for mediation, the mediator must immediately notify the mediation coordinator and the parties. Within 3 days after this notice, the coordinator must appoint a replacement mediator, unless the parties agree otherwise.

(4) *Fees and Expenses.* The mediator's fee and expenses will be shared equally, unless the parties agree otherwise. Arrangements for payment must be made directly with the mediator. The mediator may require an advance deposit.

(5) *Pro Bono Mediators.* All appellate mediators who participate in this program must mediate 2 cases per year pro bono as directed by the court. Any party may apply to the mediation coordinator for the appointment of a *pro bono* mediator.

(6) *Disqualification of an Appellate Mediator.* At the discretion of the court or the mediation coordinator, an appellate mediator may be disqualified from mediating appellate cases under this Rule for failing to maintain the qualifications in sections (c)(1) or (2) above or for any other sufficient cause.

(p) **Questions or Complaints.** Complaints or concerns regarding the appellate mediator or the conduct of the mediation should be addressed to the appellate mediation coordinator and the court or clerk, unless otherwise directed by the coordinator.

(q) **Applicability.** This Rule governs the procedure for all matters in appellate mediation. If no procedure is specifically provided in this Rules or by statute, the Mississippi Court Annexed Mediation Rules for Civil Litigation apply to the extent not inconsistent herewith.

ORIGINAL

IN THE SUPREME COURT OF MISSISSIPPI

**IN RE: AUTHORIZATION OF PROGRAM
FOR APPELLATE MEDIATION**

89 R 99027

FILED

**PETITION FOR ORDER AUTHORIZING
PROGRAM FOR APPELLATE MEDIATION**

JAN 19 2012

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Petitioner, the Alternative Dispute Resolution Section of the Mississippi State Bar (the “ADR section”), requests the Court to adopt Rule 50 to Authorize Appellate Mediation (Exhibit “A”) and authorize a Program for Appellate Mediation, to be governed by the proposed Rules for Appellate Mediation (Exhibit “B”). Proposed forms for use in the program are attached collectively as Exhibit “C”.

BACKGROUND

1. Over thirty state appellate courts and all of the federal circuit courts have implemented ADR programs. Pursuant to Federal Rule of Appellate Procedure 33, the federal courts use some variation of a settlement conference, while a majority of state jurisdictions use mediation as the ADR process. With most of the state appellate programs, the courts use selection criteria to divert an appeal to mediation. In these instances, the parties’ participation is mandatory. Some state courts have an “opt-in” option for eligible parties who are not selected.

2. In 2004, Alabama instituted the first state-wide mandatory mediation program. After learning of Alabama’s program, the ADR section began exploring the use of mediation by appellate courts. Over the past several years, the ADR section devoted significant time and research toward the study of the different dispute resolution (DR) models adopted by state

appellate courts.¹ For instance, in 2004, the section chair attended the one day training session for appellate mediators in Montgomery, Alabama, and obtained certification as an appellate mediator. The next year, the section chair agreed to serve a second term for the ADR section. During the second term, the chair created an Appellate Mediation Subcommittee. The chair of the Subcommittee attended the appellate mediation training in Alabama, and interviewed the Appellate Mediation Administrator (non-attorney) about the operation of Alabama's appellate mediation system. The administrator provided logistical information, as well as statistics illustrating the success of the program. Statistics for Alabama's appellate mediation program in 2010 are attached as Exhibit "D".

3. Upon return to Mississippi, at the next ADR Section meeting, the Subcommittee chair summarized Alabama's appellate mediation system. The presentation also included information about other states' programs. At the end of the meeting, the Section voted to recommend an analogous system to the Mississippi Supreme Court. The Section, however, recognized the need to educate others about appellate mediation. A copy of the materials from the Alabama training was sent that year to Chief Justice Jim Smith and to the chair of the Court Annexed Mediation Committee. The Section also engaged Judy Keegan, the Director of Alabama's ADR Center, to speak at the Section meeting at the Mississippi Bar Convention. The next year, Alabama Judge Tommy Bryan covered the topic of appellate mediation.

4. The ADR section has continued to research appellate mediation programs in other jurisdiction, to gather statistics about success of those programs and to work toward the goal of recommending a Program for Appellate Mediation. Those endeavors convinced ADR Section leaders that the adoption of a Program for Appellate Mediation will generate statistics and a

¹ At that time, the ADR section was chaired by Sid Davis. Through his leadership, the ADR section began to research different appellate mediation programs. His continued leadership and his enthusiasm for appellate mediation prompted the ADR section to continue his efforts during each successive MSB year.

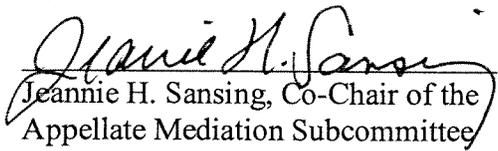
foundation upon which this Court can base a decision for the permanent adoption of an appellate mediation program.

5. The parameters of the proposed Program, including rules and forms, are based upon Alabama's appellate mediation.

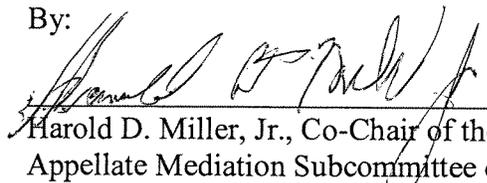
Respectfully submitted,

THE ADR SECTION OF THE MISSISSIPPI BAR

By:


Jeannie H. Sansing, Co-Chair of the Appellate Mediation Subcommittee Of the ADR Section 2011-12; Chair of the ADR Section 2010-2011; Chair of the Appellate Mediation Subcommittee of the ADR Section 2006-07, 2007-08; Co-Chair of the Appellate Mediation Subcommittee of the ADR Section 2009-10

By:


Harold D. Miller, Jr., Co-Chair of the Appellate Mediation Subcommittee of the ADR Section 2011-12; Chair of the Appellate Mediation Subcommittee of the ADR Section 2010-11, 2009-10; Chair of the Ad Hoc Court Annexed Mediation Committee 1997; First Chair of the ADR Section of the MSB

Rule 50. APPELLATE MEDIATION

a) Introduction. An appellate court may direct the attorneys for the parties and the parties to appear before an approved mediator, who may be designated by the Court.

b) Attendance at Sessions. Parties with full settlement authority and parties' counsel are required to attend mediation, unless excused from attendance by the mediator.

c) Privileged discussions. The content of mediation discussions and proceedings, including any statements made or documents prepared by any party, attorney, mediator, or other participant, is privileged and shall not be construed for any purpose as an admission against interest.

d) Confidentiality. Statements and comments made during mediation conferences and in related discussions are confidential and shall not be disclosed to the appellate court. Appellate mediators shall not be called as witnesses, and the information from the mediation, except for failure of a party or counsel to comply with this rule, shall not be disclosed to judges, staff, or employees of any court; provided, however, that it shall not be a violation of this subsection (d) to disclose to the appropriate person or entity such information as may be necessary to track the mediation and appeal process. The purposes of disclosing such information are to maintain status records and statistics, to ensure orderly compliance with this rule, and to provide a mechanism for returning the case to the appellate appeal process where mediation has not resolved the case. Notwithstanding the foregoing, the bare fact that a settlement has not been reached as a result of mediation shall not be considered confidential.

e) Mediation Not Binding. No party shall be bound by anything said or done at a mediation session unless a settlement is reached and the agreement is reduced to writing.

f) Noncompliance. Failure to comply with this rule may result in the imposition of sanctions, including dismissal of the appeal.

g) An appellate court may adopt rules and procedures to implement and govern the appellate mediation authorized by this Rule 50.

Jackson 7390052v1

Exhibit "A"

MISSISSIPPI RULES OF APPELLATE MEDIATION
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MISSISSIPPI RULES OF APPELLATE MEDIATION

RULE 1. OVERVIEW AND SCOPE OF APPELLATE MEDIATION PROGRAM

(a) **Scope.** The appellate mediation program, established in the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi pursuant to Rule 50 of the Mississippi Rules of Appellate Procedure, provides an alternative means for resolving appeals in civil cases. The program is coordinated by an executive director, and operates, in each court, under the direct supervision of an appellate mediation administrator, an attorney employed by the respective court. The appellate mediation office shall be located at the judicial building in Jackson, Mississippi.

(b) **Goals.** To the extent resources are available, this program will provide the parties with a forum and process by which they can: (1) realistically consider the possibility of settlement of the entire case or issues in the case; (2) discuss limiting and simplifying the issues on appeal; (3) take actions that may reduce costs; and (4) aid the speedy and just resolution of any case.

RULE 2. SCREENING FOR MEDIATION

(a) **Content of Forms.** Except as provided in Rule 2(e), no forms or notices filed with the appellate mediation office shall contain information relating to the parties' positions regarding settlement or any substantive matter that is the subject of the mediation. The exclusive and sole purposes of forms and notices to be filed in conjunction with the appellate mediation program are to maintain status records and statistics, to ensure orderly compliance with Rule 50, Miss. R. App. P., and to provide a mechanism for returning the case to the ordinary appeal process when mediation has not resolved the case.

(b) **Eligible Cases.** All civil matters within the jurisdiction of the Supreme Court of Mississippi or the Court of Appeals of the State of Mississippi, when all parties are represented by counsel, shall be eligible for referral to the appellate mediation program.

(c) **Pre-screening of Cases.** Upon receipt of the notice of appeal and Civil Case Filing Form (see Rule 3(d), Mississippi Rules of Appellate Procedure), the appellate mediation administrator shall determine whether a case should be sent to appellate mediation. If a case is chosen for mediation, the administrator will promptly furnish a Mediation Case-Screening Form and a Confidential Statement to Enter Mediation (Forms 2 and 3 to these Rules) to the parties.

(1) **Mediation Case-Screening Form.** The appellant and the appellee shall file a Mediation Case-Screening Form (Form 2 to these Rules), which provides information to supplement the docketing statement, in the court in which the case is pending within 14 days of the date shown on the Mediation Case-Screening Form. The appellant shall attach to the Mediation Case-Screening Form the following: (1) a copy of the docketing statement; (2) a copy of the complaint and any amendments to the complaint; (3) a copy of the order or judgment to be reviewed by the appellate court; (4) a copy of the order on any post-judgment motion, if applicable; and (5) a copy of the post-judgment motion if it will assist the administrator in determining the nature of the dispute.

(2) **Confidential Statement.** The appellant and the appellee shall return the Confidential Statement (Form 3 to these Rules) to the appellate mediation office within 14 days of the date shown on the Confidential Statement. The Confidential Statement, which gives a party the opportunity to request mediation, shall not be served on opposing counsel.

(d) **Notice to Clerk (and Court Reporter) to Stay Proceedings on Appeal.** When the Mediation Case-Screening Form and the Confidential Statement are sent to the parties, a Notice to Clerk (and Court Reporter) to Stay Proceedings on Appeal (Form 4 to these Rules), shall be sent to the trial court clerk and, if appropriate, the court reporter, staying the record preparation pending further orders of the court. The court reporter shall, however, notify the appellant of the estimated cost of the transcript within two weeks of the date on the Notice of Stay.

The appellate process, including the times for preparing the clerk's record and the reporter's transcript for briefing, will be stayed until mediation is completed or terminated. If the mediation reaches an impasse, the case shall be ordered reinstated to the appellate docket and the stay of proceedings lifted.

(e) **Exceptions.** The confidential statement (Form 3) to be filed with the mediation office may contain information relating to the parties' positions regarding settlement.

(f) **Filing of cross or related appeal not stayed.** In a case in which the appellate process has been stayed pursuant to Subdivision (d), the time for filing of a cross-appeal or any other appeal related to the stayed case is not stayed.

Rule 3. REFERRAL TO MEDIATION

(a) **Referral to Mediation.** The appellate mediation administrator will review the Mediation Case-Screening Forms and the Confidential Statements completed by the parties. Selection of cases for mediation is based on the administrator's determination that the case should be referred to mediation after reviewing the facts, the order appealed from, and the standard of review the appellate court will employ.

(1) **Order of Referral to Mediation.** The Order of Referral to Mediation (Form 5 to these Rules) notifies the parties that the case shall be mediated and instructs them to attempt to agree on a mediator.

(2) **Report on Status of Selection of Mediator.** The appellant shall file with the appellate mediation office the Report on Status of Selection of Mediator (Form 6 to these Rules), within 14 days of the date of the issuance of the Order of Referral to Mediation. The Report on the Status of Selection of Mediator advises the appellate mediation office of the result of efforts between parties to agree on the designation of a mediator. Before the parties submit the name of a mutually satisfactory mediator, the parties shall obtain the mediator's commitment to serve and make arrangements with regard to mediation fees. In the event the parties cannot agree on a mediator, the appellant shall promptly notify the appellate mediation office by filing the Report on Status of Selection of Mediator, and a mediator shall be selected by the appellate mediation administrator of the court in which the appeal is pending. (See Rule 4 for Qualifications of a mediator.)

(b) **Appointment of Mediator.**

(1) **Order Appointing Mediator Pursuant to Stipulation of the Parties.** Upon the parties' agreement on a mediator, the appellate mediation administrator will issue an Order Appointing Mediator Pursuant to Stipulation of the Parties (Form 7 to these Rules), which will be sent to the parties and the mediator.

(2) **Order Appointing Mediator absent Stipulation of the Parties.** If the parties cannot agree upon a mediator within 14 days of the Report on Status of Selection of Mediator, the appellate mediation administrator shall appoint and serve upon the parties to the appeal and mediator an Order Appointing Mediator Absent Stipulation of the Parties (Form 8 to these Rules).

(c) **Referral by the Court.** If, in the opinion of the appellate court, a case is appropriate for mediation, the court may refer cases to the program at any time during the appellate process.

(d) **Mediation Time Frame.** Upon issuance of the Order of Referral to Mediation, the parties and the mediator shall have 63 days within which to complete the mediation. Within seven days of the completion of the mediation, the mediator shall file with the appellate mediation office a Mediator's Report (Form 13 to these Rules) and evaluations (Forms 14, 15 and 16 to these Rules).

Rule 4. APPELLATE MEDIATOR

(a) **Qualifications of Mediator.** Before a person can be accepted as an appellate mediator, he or she must submit a Mediator Application (Form 1) to the appellate mediation office and meet the following criteria:

(1) **Appellate Mediator Roster.** The appellate mediation office shall maintain a roster of the approved appellate mediators. An approved mediator is someone who:

- A. Is a former justice or judge of an appellate court of this state in good standing with the Mississippi State Bar and
1. Has indicated his or her desire to be appointed as a mediator for purposes of these Rules by completing and submitting to the appellate mediation office an application (Form 1 to these Rules) to serve as mediator for the appellate mediation program;
 2. Is on the Mississippi State Court Mediation Roster;
 3. Has agreed to serve as a mediator pro bono pursuant to Rule 4(h);
 4. Has agreed to adhere to the standards stated in Part XV of Exhibit "B" to the Court Annexed Mediation Rules for Civil Litigation.
 5. Has agreed to be bound by these Mississippi Rules of Appellate Mediation; and
 6. Has agreed to waive any and all claims against the appellate court in connection

with his or her mediation of any court-referred dispute; or

- B.** Is an attorney in good standing with the Mississippi State Bar and
1. Has indicated his or her desire to be appointed as a mediator for purposes of these Rules by completing and submitting to the appellate mediation office an application (Form 1 to these Rules) to server as mediator for the appellate mediation program;
 2. Has successfully completed the six-hour appellate mediation course approved by the appellate mediation office;
 3. Is on the Mississippi State Court Mediation Roster;
 4. Has agreed to serve as a mediator pro bono pursuant to Rule 4(h);
 5. Has agreed to adhere to the standards stated in Part XV of Exhibit "B" to the Court Annexed Mediation Rules for Civil Litigation;
 6. Has agreed to be bound by the Mississippi Rules of Appellate Mediation; and
 7. Has agreed to waive any and all claims against the appellate court in connection with his or her mediation of any court-referred dispute.

(2) **Non-Roster Mediator.** Nothing in these Rules prevents the parties from choosing their own mediator, as long as the proposed mediator:

- A. Is in good standing with the licensing board for the profession in which the person practices or, if the profession is not licensed, has three written recommendations. The appellant shall attach documentation showing these qualifications in the Report on Status of Selection of Mediator Form within 14 days from the date of the issuance of the Order of Referral to Mediation;
- B. Has agreed to adhere to the standards stated in Part XV of Exhibit "B" to the Court Annexed Mediation Rules for Civil Litigation;
- C. Has agreed to be bound by these Mississippi Appellate Mediation Rules; and
- D. Has agreed to waive any and all claims against the appellate court in connection with his or her mediation of any court-referred dispute.

(b) **Duty of Mediator before Accepting Appointment.** Before accepting an appellate case for mediation, a mediator must make all disclosures to the parties required by the Rules. If, upon receipt of such disclosure, it is determined that the mediator is unable to serve, the parties may, within seven days, name a different person, who has the requisite qualifications as a mediator (see Rule 4(a)). If the parties cannot agree on a mediator within the seven-day period, the appellate mediation administrator shall appoint a mediator.

(c) **Inability of Mediator to Serve.** If, once a mediator has accepted an appellate case for mediation, the mediator becomes unwilling or unable to serve; the mediator shall immediately notify the appellate mediation office. Within seven days of such notice, the parties may name a different person, who has the requisite qualifications, as an appellate mediator (see Rules 4(a)). If, within that seven-day period, the parties cannot agree on a mediator, the appellate mediation administrator shall appoint a mediator.

(d) **Authority of Mediator.** The mediator shall attempt to help the parties reach a satisfactory resolution of their dispute. The mediator does not have authority to impose a settlement upon the parties. The mediator is authorized to conduct joint and separate meetings with the parties and to communicate offers between the parties as the parties authorize. The mediator is authorized to end the mediation when, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

(e) **Ethics.** Mediators shall adhere to the rules of conduct for mediators as stated in Part XV of Exhibit "B" to the Court Annexed Mediation Rules for Civil Litigation.

(f) **Fees and Expenses.** The parties shall mutually agree on the fees of the mediator selected by them. If a mediator is appointed, the mediator's fee and incidental expenses shall be shared equally between the parties, unless otherwise

determined by the final mediation agreement. The mediator may require an advance deposit covering the estimated cost of mediation, but in any event, arrangements for payment of the cost of mediation and incidental expenses must be coordinated directly with the mediator. Attorneys for each party shall see to prompt payment of the mediator's fees and expenses. If satisfactory arrangements for compensation cannot be made, then the parties shall so advise the appellate mediation office, and the appellate mediation administrator will name another mediator.

(g) **Billings to Parties.** The mediator shall bill the parties based upon the rates and terms agreed to by the mediator and parties. It is not necessary to send copies of fee agreements or billings to the appellate mediation office. The parties are solely responsible for any billings by the mediator. It is highly recommended that the private mediator fully disclose and explain to the parties the basis of compensation, fees, and charges to the parties in advance of the mediation and that the fee arrangement be memorialized in a written contract. These disclosures and explanations usually include:

- (1) The basis for and amount of any charges for services to be rendered, including minimum fees and travel time;
- (2) The amount charged for the postponement of cancellation of mediation sessions and the circumstances under which such charges will be assessed or waived;
- (3) The basis and amount of charges for any other items; and
- (4) The parties' pro rata share of mediation fees and costs of the parties have previously agreed to share those fees and costs.

Neither the appellate court nor the appellate mediation office will aid in the enforcement of the terms and conditions of the contract, including the collection of any outstanding fees, costs and expenses.

(h) **Pro Bono Mediators.** Upon request from the court, all appellate mediators must mediate two cases each year for which they will not be paid.

- (1) **The Motion for Waiver of Mediator Fees.** Any party may file a motion for a waiver of mediator fees (Form 9 to these Rules) before a mediator is appointed to mediate the party's cases. The motion for waiver of mediation fees must be accompanied by an affidavit in support of a motion for appointment of pro bono mediator (see Form 9A, Mississippi Forms of Appellate Mediation). Only valid reasons for the waiver of mediation fees, such as undue financial hardship, will be considered.
- (2) **Order Appointing Pro Bono Mediator.** All pro bono appointment shall be so indicated in the Order Appointing Pro Bono Mediator (Form 10 to these Rules).

(i) **Disqualification of an Appellate Mediator.** An appellate mediator may be disqualified from mediating appellate cases pending in the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi for:

- (1) Violating the Mississippi Appellate Mediation Rules, or the standards set forth in Part XV of Exhibit "B" to the Court Annexed Mediation Rules for Civil Litigation;
- (2) Failure to remain in good standing and abide by the standards of practice established by the Mississippi State Bar or the Mississippi Center for Dispute Resolution, or, if the mediator is a nonroster mediator, failure to remain in good standing with the licensing board for the profession in which the person practices; or
- (3) At the discretion of the Court.

Rule 5. MEDIATION PROCEDURES

(a) **Time and Place of Mediation.** The mediator shall fix the time and place of any mediation session at a location that is conducive to discussion and that provides security to maintain confidentiality. The mediation should be conducted in a manner appropriate to the dignity of the court.

(b) **Rescheduling Mediation.** Any requests to reschedule the mediation within the 63-day time frame are to be made directly to the mediator, not the appellate mediation office.

(c) **Additional Mediation Sessions.** If a settlement is not reached at the initial mediation session, but the mediator believes further mediation sessions or discussion would be productive, the mediator may conduct additional mediation sessions in person or telephonically within the 63 days allowed by these Rules for mediation. If the mediation is not completed within 63 days of the Order of Referral to Mediation, mediation shall be deemed to be at an impasse, unless an extension has been granted pursuant to subsection (e) of this Rule.

(d) **No Record.** There shall be no record made of the mediation proceeding.

(e) **Extensions.** A mediator may request an extension of time beyond the 63-day period allowed by Rule 3(d) if he or she is of the opinion that the additional time for mediation would be productive. The request for an extension must be made in writing or telephonically to the appellate mediation administrator within the time allowed for mediation. The mediator must send a confirmation letter to the appellate mediation office, copied to all counsel. That letter should read as follows:

"Re: [Appeal number and style]. This confirms that to facilitate settlement the appellate mediation administrator has granted my request to extend the time to mediate this appeal from the current due date of [date] to the new due date of [date]."

(f) **Attendance at Mediation Session.** Mediation by telephone conferencing may be used if permitted by the mediator. A party is deemed to appear at a mediation session if the following persons are physically present or, if the mediator so authorizes, are reasonably available to authorize settlement during the mediation session:

- (1) The party or its representative having full authority to settle without further consultation.
- (2) The party's counsel of record.
- (3) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.
- (4) As to a governmental or other entity for which settlement decisions must be made collectively, the availability or presence requirement may be satisfied by a representative authorized to negotiate on behalf of that entity and to make recommendations to it concerning settlement.

The failure of a party, and/or the party's counsel, to attend the mediation session may be grounds for sanctions against the party, the party's counsel, or both, to be imposed by the appellate court in which the case is pending. (See subsection (1) of this Rule.)

(g) **Submission of Mediation Statement and Documents.** The mediator may require the parties to prepare and submit a Mediation Statement. If a Mediation Statement is required, the Mediation Statement should include:

- (1) a brief recitation of the facts established by the fact-finder;
- (2) the efforts to settle the case, including any offers or demands and previous mediations;
- (3) a statement of the issue or issues on appeal and the manner in which each issue was preserved.
- (4) a statement of the standard of review applicable to each issue;
- (5) a summary of the parties' legal positions and a candid assessment of the respective strengths and

weaknesses of those positions;

- (6) the present posture of the appeal, including any matters pending in the trial court or in any related litigation;
- (7) any recent developments that may affect the resolution of the appeal;
- (8) identifying the individual or individuals who the parties or their counsel believe should be directly involved in the settlement discussions;
- (9) a description of any sensitive issues not apparent from the court records that may influence the settlement negotiations;
- (10) the nature and extent of the relationship between the parties or their counsel;
- (11) the parties' priority of interest in the resolution of the dispute;
- (12) any suggested approach for the mediator to take in an attempt to settle the appeal (e.g., "problem" to be settled, sequence of issues);
- (13) any creative solutions;
- (14) necessary terms in any settlement;
- (15) any particular concerns about confidentiality;
- (16) any limitations in counsel's authority to make commitments on behalf of the clients; and
- (17) any additional information that the counsel's client or the other party needs to settle the case and whether it should be provided before the mediation.

Mediation Statements are confidential. (See Rule 8 to these Rules.) Copies of the Mediation Statements submitted by the parties should go directly to the mediator and should not be served upon opposing counsel. Documents prepared for mediation sessions are not to be filed with the appellate mediation office or with the clerk's office of the appellate court in which the case is pending and are not to be part of the record on appeal.

(h) Conduct of Mediation. Although the mediation sessions are relatively informal, they are court related proceedings and shall be conducted with that spirit in mind. The mediation process is nonbinding and no settlement is reached unless all parties agree.

The mediator should begin the mediation by describing the mediation process, discussing confidentiality, and inquiring whether any procedural questions or problems can be resolved by agreement. The parties and the mediator may then discuss, either jointly or separately, and in no particular order, the following topics:

- (1) the legal issues and the appellate court's decision-making process regarding these issues (e.g., preservation of error, waiver, standards of review, etc.);
- (2) the efforts to settle the case;
- (3) the parties' underlying interests, preferences, motivations, assumptions, and new information or other changes that may have occurred since the trial court's decision;
- (4) future events based upon the various outcome alternatives of the appeal;
- (5) how resolution of the appeal affects the underlying problem;
- (6) cost-benefit and time considerations; and
- (7) any procedural alternatives applicable to the appeal (e.g., vacatur, remand, etc.).

The discussion is not limited to these topics and, because each appeal has its own circumstances, will vary considerably. The mediator will also attempt to generate offers and counteroffers and may have several follow-up mediation sessions by telephone or in person until the appeal is settled or it is determined that it will not settle.

Because appellate mediation is based on the principles of self-determination by the parties and the impartiality of the mediator, the mediator may apply the facilitative model of mediation.

(i) **Sanctions.** Neither the appellate mediation office nor the appellate mediation administrator has the authority to impose sanctions. If, however, a party refuses to attend a mediation session, unreasonably delays the scheduling of mediation, or otherwise unreasonably impedes the conduct of the mediation, the court may reinstate the case to the appellate docket, and the court may impose sanctions. Sanctions may include, but are not limited to, assessing reasonable expenses caused by the failure of the mediation, including an award of mediator and/or attorney's fees; assessing all or a portion of the appellate costs; dismissal of the appeal; or taking such other appropriate action as the circumstances may warrant. No motion for sanctions by litigants or recommendation for sanction by the mediation office will be presented to the appellate court until after the court has decided the case on the merits.

Rule 6. COMPLETION OF MEDIATION PROCESS

(a) **Mediator's Report.** Within seven days of the completion of the mediation, the mediator shall file with the appellate mediation office a Mediator's Report (Form 13 to these Rules). Upon the filing of the Mediator's Report or the expiration of the time allowed for mediation, whichever occurs first, all appellate time requirements shall resume.

(1) **No Agreement.** If the parties do not reach an agreement on any matter during mediation, the mediator shall so indicate in the Mediator's Report, without comment or recommendation.

(2) **Agreement.** If a partial or final agreement is reached, the mediator shall indicate that fact in the Mediator's Report. The report shall be signed by all parties and their attorneys.

A. In those cases where a partial agreement is reached, the case will be reinstated on the appellate docket for appellate determination of the remaining issues and the stay of proceedings lifted. All appellate time requirements shall resume.

B. Where the mediation results in resolution of the appeal, dismissal of the appeal will be governed by Rule 42, Mississippi Rules of Appellate Procedure. (See Rule 7 of these Rules.)

(b) **Evaluations.** At the conclusion of all mediation proceedings in which the mediation office requests evaluations, the mediator shall distribute evaluations to the counsel and parties of record inviting their candid responses about the effectiveness of the appellate mediation program in assisting the parties to resolve their issues on appeal.

The mediator shall distribute evaluations (Forms 14, 15 and 16 to these Rules) at the mediation session and the attorney and parties shall be informed that completion of the evaluations is essential to the program. Evaluations are to be completed by the mediator, the attorneys, and the parties. Counsel and parties are to return evaluations in a sealed envelope to the mediator. The mediator shall return the completed evaluations with the Mediator's Report to the appellate mediation office within seven days of completion of mediation.

Rule 7. POST-SETTLEMENT DISMISSAL PROCEDURES

(a) **Joint Stipulation for Dismissal of Case After Mediation (Form 11 to these Rules).** If the parties reach an agreement as a result of the mediation, they may file a joint (or agreed) motion to dismiss the case pursuant to Rule 42, Mississippi Rules of Appellate Procedure, in the clerk's office of the appellate court in which the case is pending. A copy of the order to dismiss the case shall be served on the mediator. The motion to dismiss should address the following:

(1) whether the dismissal pertains to all parties and claims on appeal;

(2) whether the case should be remanded to the trial court for further proceedings in conformance with the parties' settlement agreement; and

(3) whether the parties are to bear their own costs or whether, pursuant to the parties' agreement, the costs are to be otherwise apportioned.

(b) **Termination of Mediation and Notice to Reinstate Appeal (Form 12 to these Rules).** The mediator may terminate the mediation process at any time, if, in the opinion of the mediator, further attempts at mediation will serve no useful purpose.

- (1) Once mediation has been terminated without an agreement, the appeal will be reinstated on the appellate docket and the stay of proceedings lifted to reinstate the appeal and the clerk of the appellate court shall send the Notice to Reinstate Appeal (Form 12 to these Rules) to the parties.
- (2) ALL APPELLATE TIME REQUIREMENTS SHALL RESUME. The appellant shall make satisfactory arrangements with trial court clerk and court reporter for preparation of the record on appeal within seven days of the date of the Notice to Reinstate Appeal.

Rule 8. CONFIDENTIALITY

Except as otherwise required by law, the appellate mediation program operates under the rules of confidentiality as provided below.

All information disclosed in the court of screening for mediation, referral to mediation, and mediation, including oral, documentary, or electronic information shall be deemed confidential and shall not be divulged by anyone involved in the mediation program or in attendance at the mediation except as permitted under this Rule, by statute, or by the Mississippi Rules of Appellate Procedure.

There shall be no reference in any appellate motion, brief, or argument to the appellate mediation program or that the appeal was mediated or that mediation reached an impasse, except in those cases where mediation was partially successful and disclosure is necessary for a complete statement of the case. It is the responsibility of the counsel to bring this exception to the rules to the attention of the clerk's office or the mediation office. Failure to do so may result in a waiver of this exception.

The mediator and mediation program employees shall not be compelled in any adversary proceeding or judicial forum to divulge the contents of any documents revealed during mediation or the fact that such documents exist or to testify in regard to the mediation. The mediator's notes and the parties' Mediation Statements do not become part of the court's file.

The phrase "information disclosed in the course of screening for mediation, referral to mediation, and mediation," as used in this Rule, shall include, but not be limited to: (1) views expressed or suggestions made by another party with respect to a possible settlement of the dispute; (2) admissions made by another party in the course of the mediation proceedings; (3) proposals made or views expressed by the mediator; (4) that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator; and (5) all records, reports, or other documents received by a mediator while serving as mediator.

The confidentiality rule applies in all mediated cases conducted by an appellate mediator. The court strictly enforces this Rule.

Rule 9. GENERAL

(a) **Service.** All documents filed with the appellate mediation office shall be served on opposing counsel, except as otherwise indicated by these Rules.

(b) **Questions or Complaints.** A complaint by a party or its counsel regarding the appellate mediator or the conduct of the mediation should be addressed to the appellate mediation administrator of the court in which the appeal is pending. Questions and complaint shall not be addressed to the Supreme Court of Mississippi, the Mississippi Court of Appeals Mississippi, or the clerk's staff of the respective courts, unless the party, counsel, or appellate mediator is directed to do so by the appellate mediation office.

(c) **Applicability.** These Rules govern the procedure for all matters in appellate mediation. If no procedure is specially provided in these Rules or by statute, the Mississippi Court Annexed Mediation Rules for Civil Litigation shall be applicable to the extent not inconsistent herewith.

Rule 10. SUSPENSION AND TERMINATION OF PLAN

These rules shall remain in effect until amended or terminated by the court.

(F o r m 1)
Appellate Mediation Program
Mediator Application
 PLEASE PRINT OR TYPE APPLICATION

Name: _____ Firm or Agency: _____
 Street or P.O. Box: _____ City/Town: _____
 County: _____ Zip Code: _____
 Phone: _____ Fax No: _____
 E-mail: _____ State Bar No: _____

1. Have you completed the Mississippi appellate mediation training? If so, please attach a copy of your certificate.

2. List the types of mediation training in which you are registered and the dates you received the training.

3. Describe the subject matter of disputes, if any, for which you have been a mediator in the past five years, with the dates. Do not give the names of the parties. State whether you were a sole mediator or a co-mediator.

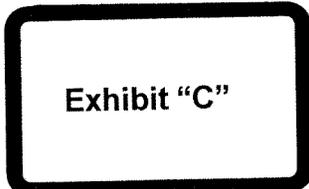
4. State the name of any organization for which you have provided mediation services during the past five years.

5. Check your areas of substantive expertise:

- | | | |
|--|--|--|
| <input type="checkbox"/> Administrative agencies | <input type="checkbox"/> Employment/Labor | <input type="checkbox"/> Personal injury |
| <input type="checkbox"/> Arbitration | <input type="checkbox"/> Environment | <input type="checkbox"/> Probate |
| <input type="checkbox"/> Attorney fees | <input type="checkbox"/> Family law | <input type="checkbox"/> Products liability |
| <input type="checkbox"/> Business/Contract | <input type="checkbox"/> Health care | <input type="checkbox"/> Professional negligence |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Housing | <input type="checkbox"/> Public entity |
| <input type="checkbox"/> Corporate | <input type="checkbox"/> Insurance | <input type="checkbox"/> Real property |
| <input type="checkbox"/> Defamation | <input type="checkbox"/> Intellectual property | <input type="checkbox"/> Securities |
| <input type="checkbox"/> Domestic violence | <input type="checkbox"/> Landlord/Tenant | <input type="checkbox"/> Workers' compensation |
| <input type="checkbox"/> Eminent domain | <input type="checkbox"/> Medical malpractice | <input type="checkbox"/> Wrongful death |

Other (specify): _____

6. What is your fee for mediation? _____



7. How many years have you been in active practice? If none, please explain.
8. What is or was the nature of your practice?
9. Are you certified in any specialty? If so, please list.
10. What percentage of your practice has been representing plaintiffs? _____ defendants? _____
11. Describe your appellate experience.
12. Have you mediated an appellate case? Please state when, where, and the type of case mediated.
13. Is your mediation style facilitative or evaluative? Please explain.
14. Please state any restrictions on your ability to travel throughout the State of Mississippi.
15. Would you be willing to conduct mediation by telephone conference if necessary?
_____ Yes _____ No
16. List any languages, other than English, in which you can conduct mediation.

Please read and sign the following agreement:

- *I agree to be bound by the Mississippi Supreme Court's Appellate Mediation Rules.*
- *I agree to waive any and all claims against the appellate court in connection with my mediation of any court-referred dispute.*
- *I agree to mediate pro bono two cases each year.*
- *I agree to adhere to the Court Annexed Mediation Rules for Civil Litigation, including Exhibit "B", Part XV Standard of Conduct for Mediators.*

Signature: _____

Date: _____

Mail this application to: Appellate Mediation Office Mississippi Supreme Court
450 High Street
Jackson, Mississippi 39201

(Form 2)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

MEDIATION CASE-SCREENING FORM

This screening form is sent to obtain information to be used by the appellate mediation administrator in determining whether this case is an appropriate one for appellate mediation. **Each party must file a copy of the completed Mediation Case-Screening Form and the Confidential Statement to Enter Appellate Mediation with the Appellate Mediation Office, 450 High Street, Jackson, Mississippi 39201, within 14 days of the date of this notice, and serve a copy of the completed Mediation Case-Screening Form on opposing counsel.**

In addition to the documents required in the first paragraph, the **appellant shall** attach (1) a copy of the docketing statement, (2) a copy of the complaint and any amendments to the complaint; (3) a copy of the order or judgment to be reviewed by the appellate court; (4) a copy of the order on any post judgment motion, if applicable; and (5) a copy of the post judgment motion if it will assist the administrator to determine the nature of the dispute.

**FAILURE TO RETURN THE MEDIATION CASE- SCREENING FORM
MAY RESULT IN SANCTIONS (SEE RULE 5 (I)).**

Please complete your portion of this form.

Appellant's attorney

Mississippi Bar No.

Address, City, State, Zip

Phone

Fax

E-mail

Appellee's attorney

Mississippi Bar No.

Address, City, State, Zip

Phone

Fax

E-mail

ISSUES ON APPEAL (to be completed by appellants/cross-appellants only):

Are there any issues you expect to be raised on appeal that are not listed on the docketing statement? If so, please attach to this form a statement of those additional issues.

IN FORMA PAUPERIS

Were you granted leave to proceed in forma pauperis on appeal at the trial level? If so, attach a copy of the order granting such leave.

MEDIATION

_____ Was the case mediated at the trial level?
Yes _____ No _____

Has the case been mediated since entry of the order appealed?
Yes _____ No _____

THE APPELLANT IS TO ATTACH A COPY OF THE DOCKETING STATEMENT, A COPY OF THE COMPLAINT AND ANY AMENDMENTS TO THE COMPLAINT, A COPY OF THE ORDER OR JUDGMENT TO BE REVIEWED BY THE APPELLATE COURT, A COPY OF THE ORDER ON ANY POST JUDGMENT MOTION, IF APPLICABLE, AND A COPY OF THE POST JUDGMENT MOTION IF IT WILL ASSIST THE ADMINISTRATOR TO DETERMINE THE NATURE OF THE DISPUTE.

_____ Date

_____ Signature

_____ Print Name

Lead counsel for: _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on this
_____ day of _____, 20_____, to the following:

Served by:

U.S. Mail to their regular mailing addresses or by Email

to their regular email addresses:

s/ _____
Of Counsel

(Form 3)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

CONFIDENTIAL STATEMENT TO ENTER
APPELLATE MEDIATION

NOT TO BE SERVED ON OPPOSING PARTY

I believe appellate mediation is (select one):

- appropriate
 inappropriate

for my appeal for the following reasons (please explain in detail):

Date

Signature

Print Name

Counsel for: _____

NOTE: This form is to be filed with the Appellate Mediation Office, 450 High Street, Jackson, Mississippi 39201, within 14 days from the date of this form, but it is not to be served on opposing counsel. Although requests to enter mediation are not automatically granted, the appellate mediation administrator will review this information to determine whether this appeal should be mediated.

(Form 4)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

**NOTICE TO CLERK/COURT REPORTER TO
STAY PROCEEDINGS ON APPEAL**

This is to notify you that this appeal may be selected for appellate mediation. It is, therefore, now on the appellate mediation docket.

The Appellate Mediation Office will be sending a Mediation Case- Screening Form to the parties. Preparation of the record and/or transcript is stayed pending further order of this Court. THE COURT REPORTER SHALL, HOWEVER, NOTIFY THE APPELLANT OF THE ESTIMATED COST OF PREPARING THE TRANSCRIPT.

THIS ORDER DOES NOT STAY THE FILING OF A CROSS-APPEAL OR THE FILING OF ANY RELATED APPEAL.

(Form 5)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

ORDER OF REFERRAL TO MEDIATION

The foregoing case, having been reviewed by the appellate mediation administrator, is hereby referred to appellate mediation.

ORDERED:

The above-styled case is referred to mediation. Within 14 days from the date of this order, **the appellant** shall advise the mediation office of the mediator chosen, using the enclosed Report on Status of Selection of Mediator form. The parties may agree on a mediator from the enclosed list of court-approved mediators to mediate this case, or they may agree on a mediator not on the list so long as that individual meets the qualifications set out in Rule 4 (a) (2) of the Mississippi Appellate Mediation Rules. Please note that before a person can be accepted as an appellate mediator, he or she must submit a Mediator Application (Form 1) to the Appellate Mediation Office. It is the **appellant's** responsibility to obtain and submit a completed Mediator Application on all non-roster mediators to the Appellate Mediation Office. The Application and other forms can be found online at _____ . The parties are required to contact the mediator before returning the Report on Status of Selection of Mediator form to determine if the mediator they have agreed upon can serve. Upon receipt of the Report on Status of Selection of Mediator form, the appellate mediation administrator will enter an order appointing that mediator for this case. If the parties are not able to agree on a mediator, the appellate mediation administrator will appoint a mediator for this case from the appellate court mediator roster. If a party believes that the payment of mediation fees will cause an undue financial hardship on that party, the party may file a motion for waiver of mediator's fees and an affidavit of hardship with the appellate mediation administrator.

2. When a mediator is contacted regarding mediation, the parties should begin scheduling for mediation time(s) that are within the 63 days of the date of this order as provided in Rule 3(d), Mississippi Rules of Appellate Mediation.
3. The parties shall submit Mediation Statements if the mediator so requests. Parties with full settlement authority and counsel are required to attend mediation sessions. Mediation by telephone conferencing may be used if permitted by the mediator. See Rule 5 (f), Mississippi Rules of Appellate Mediation. If a party refuses to attend a mediation session or sessions, unreasonably delays the scheduling of mediation, or otherwise unreasonably impedes the conduct of the appellate mediation program, and the case is returned to the appellate docket as a result of those actions, the court may impose sanctions including, but not limited to, assessing reasonable expenses caused by the failure, including an award of mediator and/or attorney fees; assessing all or a portion of the appellate costs;

dismissal of the appeal; or such other appropriate action as the circumstances may warrant.

4. Each party shall appear at the mediation session or sessions. A party is deemed to appear at a mediation session if the following persons are physically present:
 - A. The party or its representative having full authority to settle without further consultation;
 - B. The party's counsel of record; and
 - C. A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle up to the amount of the plaintiffs last demand or policy limits, whichever is less, without further consultation.
5. Public entities shall be deemed to appear by the physical presence of a representative with full authority to negotiate and to recommend settlement to the public entity.
6. All appellate mediation sessions shall be confidential as provided in Rule 8 of the Mississippi Appellate Mediation Rules, and the mediation will be conducted in accordance with the Mississippi Appellate Mediation Rules, the Court Annexed Mediation Rules for Civil Litigation, and Rule 50, Mississippi Rules of Appellate Procedure.
7. The appellate process, including the times for preparing and transmitting the record and filing briefs in this case are stayed pending further order of this Court. **THE TIME FOR FILING ANY CROSS APPEAL OR RELATED APPEAL IS NOT STAYED.**
8. **THE MEDIATION SHALL BE COMPLETED WITHIN 63 DAYS FROM THE DATE OF THIS ORDER.**

Appellate Mediation Administrator

Date

CC: Counsel
Mediator

Enclosures: Appellate Mediation Roster
Report on Status of Selection of Mediator

(Form 6)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

REPORT ON STATUS OF SELECTION OF MEDIATOR

As attorney of record for the appellant, I have consulted with the attorney(s) for the appellee(s) and I hereby advise the appellate court that: (please check one and complete)

- () 1. The parties have jointly selected, and I have confirmed service as mediator with
(name), _____
(address), _____
(telephone) to mediate this dispute. _____

- () 2. The parties are unable to stipulate to the appointment of a mediator.

DATED this _____ day of _____, 200_____

Counsel for appellant

cc: Mediator (if number 1 above is checked)
Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on this
_____ day of _____, 20 _____, to the following:

Served by:

U.S. Mail to their regular mailing addresses or by Email

to their regular email addresses:

s/ _____
O
f Counsel

NOTE: This form is to be filed with the Appellate Mediation Office, 450 High Street, Jackson, Mississippi 39201, within 14 days from the date of issuance of the Order of Referral to Mediation.

(Form 7)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

Mediator [Mediator Contact Info]

**ORDER APPOINTING MEDIATOR PURSUANT TO
STIPULATION OF THE PARTIES**

The above-named mediator is hereby appointed as appellate mediator in this matter. Mediation shall be conducted in conformity with the Mississippi Appellate Mediation Rules; Rule 50, Mississippi Rules of Appellate Procedure; and the Court Annexed Mediation Rules for Civil Litigation and shall be completed within **63 days from [DATE OF ORDER OF REFERRAL]**, the date of the issuance of the Order of Referral to Mediation.

The mediator shall be compensated at a rate to be agreed upon between the parties and the mediator, which compensation shall be shared equally between the parties unless otherwise determined by final mediation agreement. An advance deposit covering the estimated cost of mediation may be required by the mediator, but in any event arrangements for payment of the cost of mediation must be coordinated directly with the mediator.

ORDERED this [DATE].

Appellate Mediation Administrator

cc: Counsel
Mediator, with enclosures

NOTE: Mediation is to conclude within 63 days from the date of the issuance of the Order of Referral to Mediation. The mediator shall file with the Appellate Mediation Office, 450 High Street, Jackson, Mississippi 39201, a mediator's report along with completed evaluations within seven days after the completion of mediation.

(Form 8)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

Mediator [Mediator Contact Info]

ORDER APPOINTING MEDIATOR ABSENT STIPULATION OF THE PARTIES

The above-named mediator is hereby appointed as appellate mediator in this matter. Mediation shall be conducted in conformity with the Mississippi Appellate Mediation Rules; Rule 50 of the Mississippi Rules of Appellate Procedure; and the Mississippi Court Annexed Mediation Rules for Civil Litigation, including Exhibit "B", Part XV Standards of Conduct for Mediators. Mediation shall be completed within **63 days from [DATE OF ORDER OF REFERRAL]**, the date of the issuance of the Order of Referral to Mediation.

The mediator shall be compensated at a rate to be agreed upon between the parties and the mediator, which compensation shall be shared equally between the parties unless otherwise determined by final mediation agreement. An advance deposit covering the estimated cost of mediation may be required by the mediator, but, in any event, arrangements for payment of the cost of mediation must be coordinated directly with the mediator.

ORDERED this [DATE].

Appellate Mediation Administrator

cc: Counsel
Mediator, with enclosures

NOTE: Mediation is to conclude within 63 days from the date of issuance of the Order of Referral to Mediation. The mediator shall file with the Appellate Mediation Office, 450 High Street, Jackson, Mississippi 39201, a mediator's report along with completed evaluations within seven days after the completion of mediation.

(Form 9)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

MOTION FOR WAIVER OF MEDIATOR'S FEES

_____, through undersigned counsel, hereby moves for a waiver of the mediator's fees and, as grounds therefore, would state that this party has been granted leave to appeal in forma pauperis. (See attached order from the trial court or the appellate court.)

Appellant/Appellee

Counsel for: _____

Date

NOTE: Signatures by both the party and counsel are required. This form is to be filed with the Appellate Mediation Office, 450 High Street, Jackson, Mississippi 39201, within 14 days after the issuance of the Order of Referral to Mediation, AND BEFORE THE REPORT ON STATUS OF SELECTION OF MEDIATOR HAS BEEN FILED WITH THE APPELLATE MEDIATION OFFICE.

APPENDIX

	Affidavit in Support of Motion for Appointment of Pro Bono Mediator	Appellate Case Number
IN THE MISSISSIPPI (SUPREME COURT) (COURT OF APPEALS)		
STYLE OF CASE		v.
Appellant/Petitioner		Appellee/Respondent
<input type="checkbox"/> I am unable, because of substantial hardship, to pay the mediator's fee. I request that payment of the mediator's fee be waived.		
AFFIDAVIT		
IDENTIFICATION		
Full name:		Date of birth:
Spouse's full name (if married):		
Complete home address:		
Number of people living in household:	Home telephone number:	
	Work phone number:	
Employer:	Length of employment:	
Employer's address:		
Employer's telephone number:		
Driver's license number:	*Social Security Number:	
*Optional		
ASSISTANCE BENEFITS		
Do you or anyone residing in your household receive benefits from any of the following sources? If so, please check those that apply.		
<input type="checkbox"/> AFDC <input type="checkbox"/> Food Stamps <input type="checkbox"/> SSI <input type="checkbox"/> Medicaid <input type="checkbox"/> Other _____		
INCOME/EXPENSE STATEMENT		
MONTHLY GROSS INCOME:		
Monthly gross income:		\$ _____
Spouse's monthly gross income (unless a marital offense)		\$ _____
Other earnings (commissions, bonuses, interest income, etc.):		\$ _____
Contributions from others living in household:		\$ _____
Unemployment/workers' compensation, Social Security, retirement, etc.:		\$ _____
Other Income (specify source of income): _____		\$ _____
TOTAL MONTHLY GROSS INCOME		\$ _____

Affidavit in Support of Motion for Appointment of Pro Bono Mediator

MONTHLY EXPENSES

A. Living expenses:

Rent/mortgage:	\$ _____	
Total utilities (electricity, gas, water, etc.):	\$ _____	
Food:	\$ _____	
Clothing:	\$ _____	
Health care/medical:	\$ _____	
Insurance:	\$ _____	
Car payment(s)/transportation expenses:	\$ _____	
Loan payments:	\$ _____	
Credit card payments:	\$ _____	
Educational/employment expenses:	\$ _____	
Other expenses (be specific): _____	\$ _____	
SUBTOTAL		A. \$ _____

B. Child support payment(s)/alimony: \$ _____ B. \$ _____

 SUBTOTAL

C. Exceptional expenses: \$ _____ C. \$ _____

 SUBTOTAL

TOTAL MONTHLY EXPENSES (add subtotals from A and B only) A + B = T. \$ _____

TOTAL MONTHLY GROSS INCOME	I. \$ _____
LESS TOTAL MONTHLY EXPENSES	- T. \$ _____
DISPOSABLE MONTHLY INCOME	\$ _____

LIQUID ASSETS:

Cash on hand/bank (or otherwise available such as stocks, bonds, certificates of deposit): \$ _____

Equity in real estate (value of property, less what you owe): \$ _____

Equity in personal property (such as value of motor vehicles, jewelry, tools, guns, furnishings, electronic equipment, less what you owe): \$ _____

Other (be specific): _____

Do you own anything else of value? Yes No

(Land, house, boat, etc.):

If so, please describe: _____

TOTAL LIQUID ASSETS \$ _____

AFFIDAVIT/REQUEST

I swear or affirm that the answers are true and reflect my current financial status. I understand that a false statement or answer to any question in this Affidavit may subject me to the penalties of perjury. I authorize the court or its authorized representative to obtain records and information pertaining to my financial status from any source in order to verify information provided by me.

Affiant's signature

Print or type name

Sworn to and subscribed before me this _____ day of _____, _____.

Judge/Clerk/Notary

(Form 10)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

Mediator

[MEDIATOR CONTACT INFO]

ORDER APPOINTING PRO BONO MEDIATOR

The above-named mediator is hereby appointed as a mediator in this matter. Mediation shall be conducted in conformity with the Mississippi Rules of Appellate Mediation; Rule 50, Mississippi Rules of Appellate Procedure; and the Court Annexed Mediation Rules for Civil Litigation. The Motion of Waiver of Mediator's Fees filed by the appellant/appellee, _____, is granted. The mediator's fees shall be waived for appellant/appellee only. Counsel and mediator shall adjust the fees charged accordingly. Mediation shall be completed within 63 days from [DATE OF REFERRAL TO MEDIATION], the date of the issuance of the Order of Referral to Mediation.

ORDERED this [DATE].

Appellate Mediation Administrator

cc: Counsel
Mediator, with enclosures

NOTE: Mediation is to conclude within 63 days from the date of issuance of the Order of Referral to Mediation. The mediator shall file with the Appellate Mediation Office, 450 High Street, Jackson, Mississippi 39201, a mediator's report along with completed evaluations within seven days after the completion of mediation.

(Form 11)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

JOINT MOTION FOR DISMISSAL OF APPEAL AFTER MEDIATION

Appellant, _____, and Appellee,
_____, pursuant to Rule 42, Mississippi

Rules of Appellate Procedure, hereby file this joint motion for dismissal.

Dated this _____ day of _____

Counsel for Appellant

Counsel for Appellee

cc: Appellate Mediation Office
Mediator

NOTE: This form is to be filed with the appellate court clerk's office, 450 High Street, Jackson, Mississippi 39201, within seven days after the completion of mediation.

(Form 12)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

NOTICE TO REINSTATE APPEAL

This is to notify you that this appeal is hereby reinstated on the appellate docket. The stay formerly imposed in the appellate proceedings is lifted. All appellate time requirements shall resume. The appellant shall make satisfactory arrangements with the trial court clerk and the court reporter for preparation of the record on appeal within seven days of this date. Failure to comply in this may result in dismissal of this appeal.

DATED this _____ day of _____, 20_____.

Clerk of the Supreme Court of Mississippi or
Mississippi Court of Appeals

Cc: Counsel
Clerk
Court reporter

(Form 13)

IN THE SUPREME COURT OF MISSISSIPPI
OR
IN THE MISSISSIPPI COURT OF APPEALS

DATE

[INSERT CASE # AND STYLE]

MEDIATOR'S REPORT

In accordance with the Court's mediation order, mediation occurred on the following

date(s)

The results of that mediation are indicated below:

1. _____ The parties reached an agreement that disposes of all issues and all claims. A motion to dismiss will be filed with the clerk of the court.
 2. _____ A partial agreement was reached. The appeal will continue as to the remaining claims.
 3. _____ An impasse as to all issues.
 4. _____ Other. _____
- _____
- _____

Completed evaluations by the mediator, the attorneys, and the parties are attached hereto; the evaluations by the attorneys and the parties are in sealed envelopes. I have submitted this report and the evaluations within seven days after the conclusion of the mediation.

DONE this _____ day of _____, in _____
Mississippi.

Signature of mediator

Name of mediator: _____

Mailing address: _____

Telephone number: _____

E-mail: _____

Fax: _____

Appellant: _____

Appellant's Counsel: _____

Appellee: _____

Appellee's counsel: _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on this
_____ day of _____, 20 _____, to the following:

Served by:

_____ U.S. Mail to their regular mailing addresses or by

_____ Email to their regular email addresses:

S _____
/

Mediator

NOTE: This form is to be filed within seven days after the completion of mediation by the appellate mediator. The mediator shall file this report with completed evaluations with the Appellate Mediation Office, 450 High Street, Jackson, Mississippi 39201.

Date: _____

Appellate Mediation Program

Mediator Evaluation

(To be completed by mediator)

Mediator: _____

Type of Case: [] _____

Other (specify): _____

Your responses will serve as a guide to the appellate mediation office about changes or improvements that need to be made to the program. Your responses are confidential and will not be part of the appellate court file.

The appeal was from a:

____ Summary judgment

____ Other appealable order; if so, please indicate the

____ Final judgment after non-jury trial

statutory provision or rule allowing appeal _____

____ Final judgment after jury trial

____ Other

Prep Time: _____ hours

No. of Sessions: _____

Session Time: _____ hours

Follow up Time: _____ hours

Total mediation fees for all parties: \$ _____

How did the case resolve?

____ Full resolution

____ Partial resolution

____ No resolution

____ Other (specify) _____

(Form 15)

Appellate Mediation Program Attorney Evaluation

Mediator: _____

Type of Case: [] _____

Other (specify): _____

Your responses will serve as a guide to the appellate mediation office about changes or improvements that need to be made to the program. **Your responses are confidential and will not be part of the appellate court file.**

I am the: _____ Appellant's attorney _____ Other (specify) _____
_____ Appellee's attorney

How did the case resolve?

_____ Full resolution _____ Partial resolution _____ No resolution
_____ Other (specify) _____

What effect did the mediation process have on the following (Insert "ND" if no difference):

Attorney fees: _____ Reduced fees _____ Increased fees By how much? (estimate) \$ _____
Other costs: _____ Reduced fees _____ Increased fees _____ By how much? (estimate) \$ _____
Court time: _____ Reduced fees _____ Increased fees By how much? (estimate) \$ _____ Months

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate:

The mediation process:

_____ Appropriateness of the process for your dispute _____ Confidentiality
_____ Fairness _____ Satisfaction with outcome
_____ Opportunity to participate Would you use this process again? _____ Yes _____ No

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate:

The mediator (name): _____

_____ Impartiality _____ Knowledge of the appellate process
_____ Temperament _____ Knowledge of the subject matter

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate:

Program administration:

_____ Efficiency (scheduling, etc.) _____ Courtesy and cooperation
_____ Paperwork _____ Mandatory participation

Comments on the above, including suggestions for program improvements:

NOTE: PLEASE COMPLETE THIS FORM AT THE TIME MEDIATION IS COMPLETED AND RETURN TO APPELLATE MEDIATOR IN A SEALED ENVELOPE.

(Form 16)

Date: _____

Appellate Mediation Program
Party Evaluation

Mediator: _____

Type of Case: [] _____

Other (specify): _____

*Your responses will serve as a guide to the appellate mediation office about changes or improvements that need to be made to the program.
Your responses are confidential and will not be part of the appellate court file.*

I am the: ___ Appellant ___ Other (specify) _____ ___ Appellee

How did the case resolve?

___ Full resolution ___ Partial resolution ___ No resolution

___ Other (specify) _____

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate:

The mediation process:

___ Appropriateness of the process for your dispute

___ Confidentiality

___ Fairness

___ Satisfaction with outcome

___ Opportunity to participate

Would you use this process again?

___ Yes ___ No

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate:

The mediator (name): _____

___ Impartiality

___ Knowledge of the appellate process

___ Temperament

___ Knowledge of the subject matter

On a scale of 1 (very dissatisfied) to 5 (very satisfied) please rate:

Program administration:

___ Efficiency (scheduling, etc.)

___ Courtesy and cooperation

___ Paperwork

___ Mandatory participation

Comments on the above, including suggestions for program improvements:

NOTE: PLEASE COMPLETE THIS FORM AT THE TIME MEDIATION IS COMPLETED AND RETURN TO APPELLATE MEDIATOR IN A SEALED ENVELOPE.

MEDIATION REPORT TO DATE

For the Period January 7, 2004 through July 1, 2011

Alabama Supreme Court

Total # of Eligible Appeals Screened For Mediation	2181
Pre-Screening*	8
Reinstated (No Referral)	1074
In Process (Appeals referred to Mediation)	16
Taken Out of Process (TOP)**	38
SETTLED	544
PARTIAL	7
IMPASSE	494

OUTCOME OF CASES REFERRED TO MEDIATION

SETTLED	544 (52.06%)
PARTIAL	7 (0.67%)
IMPASSE	494 (47.27%)
TOTAL REFERRED MEDIATIONS	1045 (100%)

* Pre-Screening – These are eligible appeals that have been sent a Case-Screening Form and Confidential Statement, but have not yet been referred to mediation.

** Taken Out of Process (TOP) – These are appeals that have been removed from the mediation docket due to extraneous circumstances, i.e. withdrawal of counsel, bankruptcy, etc.

Exhibit "D"

MEDIATION REPORT TO DATE

For the Period January 7, 2004 through July 1, 2011

Alabama Court of Civil Appeals

Total # of Eligible Appeals Screened For Mediation	2201
Pre-Screening*	22
Reinstated (No Referral)	814
In Process (Appeals referred to Mediation)	33
Taken Out of Process (TOP)**	52
SETTLED	655
PARTIAL	6
IMPASSE	619

OUTCOME OF CASES REFERRED TO MEDIATION

SETTLED	655 (51.17%)
PARTIAL	6 (0.47%)
IMPASSE	619 (48.36%)
TOTAL REFERRED MEDIATIONS	1280 (100%)

* Pre-Screening – These are eligible appeals that have been sent a Case-Screening Form and Confidential Statement, but have not yet been referred to mediation.

** Taken Out of Process (TOP) – These are appeals that have been removed from the mediation docket due to extraneous circumstances, i.e. withdrawal of counsel, bankruptcy, etc.

ORIGINAL

FILED

IN THE SUPREME COURT OF MISSISSIPPI

AUG 02 2012

**IN RE: AUTHORIZATION OF PROGRAM
FOR APPELLATE MEDIATION**

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS
89R99027-SCT

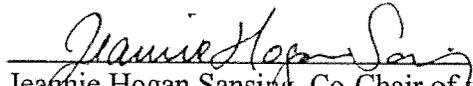
**AMENDMENT TO PETITION FOR ORDER AUTHORIZING
PROGRAM FOR APPELLATE MEDIATION**

The petition for which this is an amendment contains text, material and exhibits. Exhibit "D" to the petition contains statistics as to the use of appellate mediation by the Alabama Supreme Court and the Alabama Court of Civil Appeals of Alabama for a stated period of time. Attached hereto as Exhibit "D-1" is an amendment to the petition, which contains the same information but for a more current calendar period.

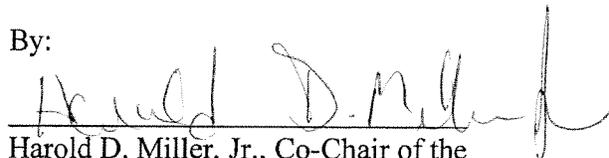
Respectfully submitted,

THE ADR SECTION OF THE MISSISSIPPI BAR

By:


Jeanie Hogan Sansing, Co-Chair of the Appellate Mediation Subcommittee of the ADR Section 2011-12, Chair of the ADR Section 2010-2011, Chair of the Appellate Mediation Subcommittee of the ADR Section 2006-07, 2007-08, Co-Chair of the Appellate Mediation Subcommittee of the ADR Section 2009-10

By:


Harold D. Miller, Jr., Co-Chair of the Appellate Mediation Subcommittee of the ADR Section 2011-12, Chair of the Appellate Mediation Subcommittee of the ADR Section 2010-11, 2009-10, Chair of the Ad Hoc Court Annexed Mediation Committee 1997, First Chair of the ADR Section of the MSB

MEDIATION REPORT TO DATE

For the Period January 7, 2004 through July 2, 2012

Alabama Supreme Court

Total # of Eligible Appeals Screened For Mediation	2400
Pre-Screening*	18
Reinstated (No Referral)	1184
In Process (Appeals referred to Mediation)	28
Taken Out of Process (TOP)**	39
SETTLED	581
PARTIAL	11
IMPASSE	539

OUTCOME OF CASES REFERRED TO MEDIATION

SETTLED	581 (51.37%)
PARTIAL	11 (0.97%)
IMPASSE	539 (47.66%)
TOTAL REFERRED MEDIATIONS	1131 (100%)

* Pre-Screening – These are eligible appeals that have been sent a Case-Screening Form and Confidential Statement, but have not yet been referred to mediation.

** Taken Out of Process (TOP) – These are appeals that have been removed from the mediation docket due to extraneous circumstances, i.e. withdrawal of counsel, bankruptcy, etc.

Exhibit D-1

MEDIATION REPORT TO DATE

For the Period January 7, 2004 through July 2, 2012

Alabama Court of Civil Appeals

Total # of Eligible Appeals Screened For Mediation	2459
Pre-Screening*	18
Reinstated (No Referral)	940
In Process (Appeals referred to Mediation)	18
Taken Out of Process (TOP)**	52
SETTLED	732
PARTIAL	6
IMPASSE	693

OUTCOME OF CASES REFERRED TO MEDIATION

SETTLED	732 (51.15%)
PARTIAL	6 (0.42%)
IMPASSE	693 (48.43%)
TOTAL REFERRED MEDIATIONS	1431 (100%)

* Pre-Screening – These are eligible appeals that have been sent a Case-Screening Form and Confidential Statement, but have not yet been referred to mediation.

** Taken Out of Process (TOP) – These are appeals that have been removed from the mediation docket due to extraneous circumstances, i.e. withdrawal of counsel, bankruptcy, etc.

APPELLATE MEDIATION REPORT
For the Period January 7, 2004 through July 2, 2012

Alabama Court of Civil Appeals	Domestic Relations Modification/Child Custody	Domestic Relations Original Divorce	Workers' Compensation
Total # of Eligible Appeals Referred to Program	498	783	486
Pre-Screening *	6	4	2
Not Assigned (Reinstated)	231	323	101
Assigned Appeals to Mediation	3	7	2
SETTLED	117	207	216
PARTIAL	1	3	1
IMPASSE	127	220	162
Taken Out of Process (TOP)**	13	19	2

Alabama Court of Civil Appeals	Domestic Relations Modification/Child Custody	Domestic Relations Original Divorce	Workers' Compensation
SETTLED	117 (47.76%)	207 (48.14%)	216 (56.99%)
PARTIAL	1 (0.41%)	3 (0.70%)	1 (0.26%)
IMPASSE	127 (51.84%)	220 (51.16%)	162 (42.74%)
TOTAL TERMINATED	245 (100%)	430 (100%)	379 (100%)

* Pre-Screening – These are eligible appeals that have been sent a Case-Screening Form and Confidential Statement, but have not yet been referred to mediation.

** Taken Out of Process (TOP) – These are appeals that have been removed from the mediation docket due to extraneous circumstances, i.e. withdrawal of counsel, bankruptcy, etc.

MEDIATION REPORT TO DATE

For the Period January 1, 2011 through December 31, 2011

Alabama Supreme Court

Total # of Eligible Appeals Screened For Mediation	194
Pre-Screening*	4
Reinstated (No Referral)	103
In Process (Appeals referred to Mediation)	30
Taken Out of Process (TOP)**	0
SETTLED	30
PARTIAL	2
IMPASSE	25

OUTCOME OF CASES REFERRED TO MEDIATION

SETTLED	30 (52.63%)
PARTIAL	2 (3.51%)
IMPASSE	25 (43.86%)
TOTAL REFERRED MEDIATIONS	57 (100%)

* Pre-Screening – These are eligible appeals that have been sent a Case-Screening Form and Confidential Statement, but have not yet been referred to mediation.

** Taken Out of Process (TOP) – These are appeals that have been removed from the mediation docket due to extraneous circumstances, i.e. withdrawal of counsel, bankruptcy, etc.

MEDIATION REPORT TO DATE

For the Period January 1, 2011 through December 31, 2011

Alabama Court of Civil Appeals

Total # of Eligible Appeals Screened For Mediation	299
Pre-Screening*	12
Reinstated (No Referral)	118
In Process (Appeals referred to Mediation)	42
Taken Out of Process (TOP)**	0
SETTLED	61
PARTIAL	1
IMPASSE	65

OUTCOME OF CASES REFERRED TO MEDIATION

SETTLED	61 (48.03%)
PARTIAL	1 (0.79%)
IMPASSE	65 (51.18%)
TOTAL REFERRED MEDIATIONS	127 (100%)

* Pre-Screening – These are eligible appeals that have been sent a Case-Screening Form and Confidential Statement, but have not yet been referred to mediation.

** Taken Out of Process (TOP) – These are appeals that have been removed from the mediation docket due to extraneous circumstances, i.e. withdrawal of counsel, bankruptcy, etc.

APPELLATE MEDIATION REPORT

For the Period January 1, 2011 through December 31, 2011

Alabama Court of Civil Appeals	Domestic Relations Modification/Child Custody	Domestic Relations Original Divorce	Workers' Compensation
Total # of Eligible Appeals Referred to Program	74	98	53
Pre-Screening *	1	8	0
Not Assigned (Reinstated)	31	37	17
Assigned Appeals to Mediation	9	14	7
SETTLED	13	18	16
PARTIAL	0	1	0
IMPASSE	20	20	13
Taken Out of Process (TOP)**	0	0	0

Alabama Court of Civil Appeals	Domestic Relations Modification/Child Custody	Domestic Relations Original Divorce	Workers' Compensation
SETTLED	13 (39.39%)	18 (46.15%)	16 (55.17%)
PARTIAL	0 (0%)	1 (2.56%)	0 (0%)
IMPASSE	20 (60.61%)	20 (51.28%)	13 (44.83%)
TOTAL TERMINATED	33 (100%)	39 (100%)	29 (100%)

* Pre-Screening – These are eligible appeals that have been sent a Case-Screening Form and Confidential Statement, but have not yet been referred to mediation.

** Taken Out of Process (TOP) – These are appeals that have been removed from the mediation docket due to extraneous circumstances, i.e. withdrawal of counsel, bankruptcy, etc.