University of Arkansas School of Law

An Agricultural Law Research Project

States' Alternative Dispute Resolution Statutes

State of Alabama

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States' Alternative Dispute Resolution Statutes

STATE OF ALABAMA

Index

Arbitration

Current through End of 2008 Regular and First Special Sessions

§ 6-6-1. Duty of courts to encourage settlement of pending controversies.

It is the duty of all courts to encourage the settlement of controversies pending before them by a reference thereof to arbitrators chosen by the parties or their attorneys and, on motion of the parties, must make such order and continue the case for award.

§ 6-6-2. Reference of controversy when no action pending to arbitrators.

When no action is pending, the parties to any controversy may refer the determination thereof to the decision of arbitrators to be chosen by themselves, and the award made pursuant to the provisions of this division must be entered up as the judgment of the proper court if the award is not performed.

§ 6-6-3. Statement of dispute; naming of arbitrators; delivery of submission with list of witnesses.

The parties must concisely state in writing, signed by them, the matter in dispute between them and that they desire to leave the determination thereof to certain persons, naming them as arbitrators; and such submission must be delivered to the arbitrators, or one of them, together with a list of the witnesses either party may desire to examine.

§ 6-6-4. Arbitrators -- Duties generally.

It is the duty of the arbitrators to appoint a time and place for hearing the parties and making their

award, of which they must give the parties three days' notice; and if no cause is shown for a continuance, they must proceed to hear and determine the matters referred to them and make their award in writing, which must be signed by them and a copy thereof be delivered to each of the parties, their agents, or attorneys and the fact and date of such delivery endorsed on the original.

§ 6-6-5. Arbitrators -- Substitution; award by majority.

(a) If any of the arbitrators fail to attend at the time and place designated and the parties appear, they may substitute others in their place or, if the parties cannot agree, the arbitrators present may themselves appoint others in their stead, of which they must make a memorandum on the submission.

(b) A majority of the arbitrators may make the award.

§ 6-6-6. Arbitrators -- Oath.

Before making their award, the arbitrators must be sworn impartially to determine the matters submitted to them, according to the evidence and the manifest justice and equity of the case, to the best of their judgment and without favor or affection, which oath they may administer to each other or may be administered to them by any officer authorized to administer oaths.

§ 6-6-7. Arbitrators -- Power to subpoena witnesses, administer oaths and take depositions.

The arbitrators, or either of them, have power to subpoena witnesses at the request of either of the parties and to administer all oaths which may be necessary in the progress of the case and must, on the application of either party, issue commission to take the deposition of any witness residing out of the county, which must be taken in the same manner as depositions in the circuit court.

§ 6-6-8. Subpoena of witnesses -- Execution.

Subpoenas for witnesses may be executed by the sheriff, by any constable of the county, or by the parties themselves.

§ 6-6-9. Subpoena of witnesses -- Liability on default.

Any witness duly summoned who fails to attend without sufficient excuse may be fined $10 for the use of the county, for the collection of which the arbitrators must issue execution; and such defaulting witness is also liable to the party summoning him for any injury sustained by the loss of his testimony, to be recovered before any court having jurisdiction.

§ 6-6-10. Fees and charges -- Arbitrators, witnesses, sheriffs and constables; how paid.

The arbitrators are, if demanded by them, entitled each to $2 per day while actually engaged in the arbitration, the witnesses to $1 per day each and the sheriff or constable to the customary fees for executing subpoenas, all of which must be paid jointly by the parties unless the arbitrators otherwise determine.

§ 6-6-11. Fees and charges -- Refusal to testify or deliver award until paid; recovery by party not liable

therefor.

Any witness may refuse to testify until his fees are paid by the party summoning him, and the arbitrators may refuse to deliver copies of the award until all charges are paid; but if paid by a party not liable therefor, he may recover the same by action before any court having jurisdiction thereof, and the receipt of the arbitrators is presumptive evidence of the fact of payment and of the liability of the party therefor.

§ 6-6-12. Award -- Proceedings when not performed; force and effect.

If the award is not performed in 10 days after notice and delivery of a copy thereof, the successful party may, if an action is pending, cause the award and the file of papers in the case to be returned to the court in which the action is pending or, if no action is pending, cause the submission and award to be returned to the clerk of the circuit court of the county in which the award is made. Such award has the force and effect of a judgment, upon which execution may issue as in other cases.

§ 6-6-13. Award -- Enforcement.

If the award is for the delivery of property or to do or omit to do any particular act, on notice and motion to the court, performance may be enforced by attachment or other appropriate writ.

§ 6-6-14. Award -- Conclusive between parties and final; exceptions.

An award made substantially in compliance with the provisions of this division is conclusive between the parties thereto and their privies as to the matter submitted and cannot be inquired into or impeached for want of form or for irregularity if the award determines the matter or controversy submitted, and such award is final, unless the arbitrators are guilty of fraud, partiality, or corruption in making it.

§ 6-6-15. Award -- Appeals.

Either party may appeal from an award under this division. Notice of the appeal to the appropriate appellate court shall be filed within 10 days after receipt of notice of the award and shall be filed with the clerk or register of the circuit court where the action is pending or, if no action is pending, then in the office of the clerk or register of the circuit court of the county where the award is made. The notice of appeal, together with a copy of the award, signed by the arbitrators or a majority of them, shall be delivered with the file of papers or with the submission, as the case may be, to the court to which the award is returnable; and the clerk or register shall enter the award as the judgment of the court. Thereafter, unless within 10 days the court shall set aside the award for one or more of the causes specified in Section 6-6-14, the judgment shall become final and an appeal shall lie as in other cases. In the event the award shall be set aside, such action shall be a final judgment from which an appeal shall lie as in other cases.

§ 6-6-16. Common-law arbitration not precluded.

Nothing contained in this division shall prevent any person or persons from settling any matters of controversy by a reference to arbitration at common law.

Seed Investigation and Arbitration Committee Rules of Procedure
Chapter 80-11-5.

Current through September 2007

80-11-5-.01. Applicability.

The rules of procedure shall govern all parties who either bring actions or who are required to respond or defend against actions brought before the Seed Investigation and Arbitration Committee.

80-11-5-.02. Notice Of Hearings.

Notice of hearings authorized under Code of Alabama (1975), § 2-26-75, shall be in writing by certified or registered mail. All parties, or the parties attorneys if they are represented by counsel, shall receive written notice of the hearing no later than two weeks prior to the hearing. This two-week prior notice may be waived if all parties so agree.

80-11-5-.03. Recording Of Hearings.

All hearings conducted shall be recorded by any method of recording that faithfully and accurately records the hearing. Transcripts and copies of any hearing shall not be available to anyone unless the Committee in its discretion so orders that a transcript of the hearing be produced. Any person who participates in a hearing who also wishes the hearing recorded may do so at his own expense. If the person uses an official court reporter or hearings reporter to record a hearing and the hearing is transcribed, the Committee shall be entitled to a copy of said transcript at no expense to the Committee.

80-11-5-.04. Issues To Be Resolved And Burden Of Proof.

(1) The party filing the complaint shall have the burden of proof at the hearing and shall be entitled to proceed first. The party defending shall be entitled to offer rebuttal evidence.

(2) Any issue presented by the complainant which is admitted by the required answer shall not have to be proved.

80-11-5-.05. Representations.

Any party to a hearing may represent himself or be represented by legal counsel. No person other than the party or his or her legal counsel shall be allowed to represent a party. The Committee may in its discretion, at the request of a party or on its own motion, waive the provisions of this rule.

80-11-5-.06. Oath Required.

Any testimony by anyone shall be only under oath. Said oath shall be administered by the Chairman or any other member of the Committee whom the Chairman may designate.

80-11-5-.07. Mandatory Requirements Of Complainant.

The following requirements are mandatory and the Committee may refuse in its discretion to consider any complaint which fails to comply with any one of the following requirements:

(a) Failure of complainant to submit $10.00 with his complaint.

(b) Failure of the complainant to substantially conform to the requirements for the complaint set out in Code of Alabama 1975, § 2-26-74.

(c) Failure of the complainant to mail copies of the complaint to the seed dealer in the manner prescribed under § 2-26-74 above.

(d) Failure or refusal of the complainant to furnish any records or documents or materials, if such are available to him, or under his control, upon request by the Committee.

(e) Failure or refusal of the complainant to testify at any hearing under oath if requested to do so by the Committee, or by any party.

80-11-5-.08. Allowable Evidence.

Any evidence of probative value, to include hearsay if it is determined to be of probative value by the Committee shall be allowed to be presented at a hearing. The Committee may, in its discretion, disallow any evidence it considers repetitious or of no benefit to the Committee in arriving at a just conclusion.

80-11-5-.09. Administrative Procedure Act To Prevail.

The rules set out in Code of Alabama 1975, § 41-22-13, for contested cases under the Administrative Procedure Act shall prevail and the Committee shall follow these rules of evidence as much as possible and practical for any hearing.

80-11-5-.10. Mandatory Requirements Of Respondent.

The following requirements of any respondent to a complaint are mandatory and the Committee may, in its discretion, consider a complaint deemed admitted if any one of the following requirements are not met:

(a) Failure or refusal of a party to answer a complaint if required to do so under § 2-26-74, and after he has been so advised to answer by the Committee.

(b) Failure or refusal of a respondent to furnish any records, documents or materials, if such are available to him, or under his or her control, upon request by the Committee.

(c) Failure or refusal of a respondent to substantially conform to respondent's requirements under § 2-26-74 above.

(d) Failure or refusal of respondent to testify under oath at any scheduled hearing if requested to do so

by the Committee or by any party.

80-11-5-.11. Scheduling of Hearings.

The Committee shall have full discretion as to when and where a hearing shall be scheduled, or to ever schedule one unless there is a request for a hearing by any party. If a hearing is requested by a party, the request will be honored, but when and during what stage of the investigation shall be at the discretion of the Committee.

80-11-5-.12. Authority Of Committee To Introduce Its Own Evidence.

The Committee shall have the authority, on its own motion, to introduce or take into account any evidence, or request the testimony of anyone deemed necessary by the Committee at any hearing or in the consideration of arriving at a just conclusion of a complaint.

80-11-5-.13. Committee Members Allowed To Conduct Own Discovery.

Any Committee member may conduct any discovery in connection with an investigation, the subject of a complaint filed with the Committee, without receiving written permission to do so by the Chairman. This discovery may or may not be considered by the entire Committee.

Mandatory Mediation Prior to Trial

Current through End of 2008 Regular and First Special Sessions

§ 6-6-20. Definition; instances requiring mediation; sanctions; exceptions; etc.

(a) For purposes of this section, "mediation" means a process in which a neutral third party assists the parties to a civil action in reaching their own settlement but does not have the authority to force the parties to accept a binding decision.

(b) Mediation is mandatory for all parties in the following instances:
(1) At any time where all parties agree.
(2) Upon motion by any party. The party asking for mediation shall pay the costs of mediation, except attorney fees, unless otherwise agreed.
(3) In the event no party requests mediation, the trial court may, on its own motion, order mediation. The trial court may allocate the costs of mediation, except attorney fees, among the parties.
(c) If any party fails to mediate as required by this section, the court may apply such sanctions as it deems appropriate pursuant to Rule 37 of the Alabama Rules of Civil Procedure.

(d) A court shall not order parties into mediation for resolution of the issues in a petition for an order for protection pursuant to The Protection from Abuse Act, Sections 30-5-1 through 30-5-10 or in any other petition for an order for protection where domestic violence is alleged.

(e) In a proceeding concerning the custody or visitation of a child, if an order for protection is in effect or if the court finds that domestic violence has occurred, the court shall not order mediation.

(f) A mediator who receives a referral or order from a court to conduct mediation shall screen for the occurrence of domestic or family violence between the parties. Where evidence of domestic violence exists mediation shall occur only if:
(1) Mediation is requested by the victim of the alleged domestic or family violence;
(2) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and
(3) The victim is permitted to have in attendance at mediation a supporting person of his or her choice, including but not limited to an attorney or advocate.
(g) Where a claim of immunity is offered as a defense, the court shall dispose of the immunity issue before any mediation is conducted.

(h) A court shall not order parties into mediation in any action involving child support, adult protective services or child protective services wherein the Department of Human Resources is a party to said action.

Mediation

Current through End of 2008 Regular and First Special Sessions

§ 6-6-25. Definitions; legislative findings; compelled testimony, etc., of mediators.

(a) For the purposes of this section, the following words shall have the following meanings:
(1) Mediation. A process in which a mediator acts to encourage and facilitate the resolution of a dispute without imposing a settlement.
(2) Mediator. A neutral third party conducting a mediation, including any co-mediators, employees, agents, or independent contractors of the mediator or co-mediator, and any person attending or observing the mediation for purposes of training.
(b) The Legislature finds that it is desirable to encourage public confidence in the use of alternative methods of dispute resolution by preventing a mediator from being compelled to testify or produce documents about a mediation.

(c) Except as otherwise permitted by the Alabama Civil Court Mediation Rules, a mediator may not be compelled in any adversary proceeding or judicial forum, including, but not limited to, a hearing on sanctions brought by one party against another party, to divulge the contents of documents received, viewed, or drafted during mediation or the fact that the documents exist, nor may the mediator be otherwise compelled to testify in regard to statements made, actions taken, or positions stated by a party during the mediation.

Alabama Civil Court Mediation Rules

Current with amendments received through June 2008

Rule 1. Definition of Mediation and Scope of Rules.

(a) Mediation is an extrajudicial procedure for the resolution of disputes, provided for by statute and by the Alabama Rules of Civil Procedure. A mediator facilitates negotiations between parties to a civil action and assists the parties in trying to reach a settlement, but does not have the authority to impose a settlement upon the parties.

(b) These rules shall apply:
(1) In mediations ordered by the courts of this State as provided by statute or by the Alabama Rules of Civil Procedure;
(2) In any other mediations by parties in a pending civil action in an Alabama court, other than the Alabama Supreme Court or Alabama Court of Civil Appeals, unless the parties expressly provide otherwise; and,
(3) In other mediations if the parties agree that these Rules shall apply.

Rule 2. Initiation of Mediation; Stay of Proceedings.

Parties to a civil action may engage in mediation by mutual consent at any time. The court in which an action is pending shall order mediation when one or more parties request mediation or it may order mediation upon its own motion. In all instances except where the request for mediation is made by only one party, the court may allocate the costs of mediation, except attorney fees, among the parties. In cases in which only one party requests mediation, the party requesting mediation shall pay the costs of mediation, except attorney fees, unless the parties agree otherwise.

Upon the entry of an order for mediation, the proceedings as to the dispute in mediation may be stayed for such time as set by the court in its order of mediation. Upon motion by any concerned party, the court may, for good cause shown, extend the time of the stay for such length of time as the court may deem appropriate.

Rule 3. Appointment of a Mediator.

Upon an order for mediation, the court, or such authority as the court may designate, shall appoint a qualified mediator. The mediator appointed shall be agreed upon by the parties concerned, subject to the qualifications provisions of Rule 4, except that if the parties do not agree upon a mediator, then the selection of the mediator shall be in the discretion of the court or its designated authority. A single mediator shall be appointed unless the parties or the court determines otherwise.

Rule 4. Qualifications of a Mediator.

In court-ordered mediations, the mediator shall have those qualifications required by statute or by the Alabama Supreme Court Mediator Registration Standards or, in the absence of such statute or standards, the mediator shall have those qualifications the court may deem appropriate given the subject matter of the mediation. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest, except by the written consent of all parties. Before accepting an appointment, the prospective mediator shall disclose to the parties any circumstances likely to create an appearance of bias or likely to prevent the mediation from commencing within a reasonable time. Upon receipt of such disclosure, the parties may name a different person as mediator. If the parties disagree as to whether a prospective mediator should serve, the court shall appoint the

mediator.

Rule 5. Vacancies.

If any mediator becomes unwilling or unable to serve, the court shall appoint another mediator. The appointment of a successor mediator shall be by the same procedures and upon the same terms as an initial appointment.

Rule 6. Assistance and Settlement Authority.

Any party not represented by an attorney may be assisted by persons of his or her choice in the mediation. Each party, or that party's representative, must be prepared to discuss during mediation sessions the issues submitted to mediation and, unless otherwise expressly agreed upon by the parties or ordered by the court before the first mediation session, someone with authority to settle those issues must be present at the mediation session or reasonably available to authorize settlement during the mediation session.

Rule 7. Time and Place of Mediation.

The mediator shall fix the time of each mediation session. The mediation sessions shall be held at any convenient location agreeable to the mediator and the parties or as otherwise designated by the court.

Rule 8. Identification of Matters in Dispute.

A mediator may require each party concerned, within a reasonable time before the first scheduled mediation session, to provide the mediator with a brief memorandum setting forth the party's position with regard to the issues that need to be resolved. The mediator shall not distribute the memoranda to the parties without their consent.

At the first session, the parties shall produce all information reasonably required for the mediator to understand the issues presented. The mediator may require either party to supplement this information.

Rule 9. Authority of Mediator.

The mediator does not have authority to impose a settlement upon the parties, but the mediator shall attempt to help the parties reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties, to communicate offers between the parties as the parties authorize, and, at the request of the parties, to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree to the mediator's obtaining such advice and assume the expenses of obtaining it. Arrangements for obtaining such advice shall be made by the mediator or by the parties. The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties (see Rule 13(a)(2)).

Rule 10. Privacy.

Mediation sessions are private. An alleged victim of domestic or family violence may have in attendance at mediations a supporting person of his or her choice. In all other cases, persons other than the parties and their representatives may attend mediation sessions only with the permission of the parties and with the consent of the mediator.

Rule 11. Confidentiality.

(a) All information disclosed in the course of a mediation, including oral, documentary, or electronic information, shall be deemed confidential and shall not be divulged by anyone in attendance at the mediation except as permitted under this Rule or by statute. The term "information disclosed in the course of a mediation" 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) the fact 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.

(b) The following are exceptions to the general rule stated in Rule 11(a):
(1) A mediator or a party to a mediation may disclose information otherwise prohibited from disclosure under this section when the mediator and the parties to the mediation all agree to the disclosure.
(2) Information otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in mediation.
(3) The confidentiality provisions of this Rule shall not apply:
(i) to a communication made during a mediation that constitutes a threat to cause physical injury or unlawful property damage;
(ii) to a party or mediator who uses or attempts to use the mediation to plan or to commit a crime; or
(iii) to the extent necessary if a party to the mediation files a claim or complaint against a mediator or mediation program alleging professional misconduct by the mediator arising from the mediation.

(c) Except as provided in Rule 11(b) above, a court shall neither inquire into nor receive information about the positions of the parties taken in mediation proceedings; the facts elicited or presented in mediation proceedings; or the cause or responsibility for termination or failure of the mediation process.

(d) A mediator shall not be compelled in any adversary proceeding or judicial forum, including, but not limited to, a hearing on sanctions brought by one party against another party, to divulge the contents of documents received, viewed, or drafted during mediation or the fact that such documents exist nor shall the mediator be otherwise compelled to testify in regard to statements made, actions taken, or positions stated by a party during the mediation.

Rule 12. No Record.

There shall be no record made of the mediation proceedings.

Rule 13. Termination of Mediation.

(a) The mediation process may be terminated at any time after the initial mediation session by any party to the mediation. It also may be terminated by the mediator. Court-ordered mediations shall be terminated by filing with the court one of the following:
(1) Notice that the parties concerned have executed a settlement agreement. Such a notice shall be signed by all parties concerned or by their attorneys; or
(2) A written declaration signed by the mediator stating that in the mediator's judgment further efforts at mediation will not contribute to a resolution of the dispute among the parties (see Rule 9).

(b) Mediation also shall be terminated by the expiration of the period of any court-ordered stay provided by Rule 2.

(c) The fact that mediation has once been terminated as to a particular dispute shall not bar the entry of a later order to mediate that dispute.

Rule 14. Interpretation and Application of Rules.

The mediator shall interpret and apply these rules insofar as they relate to the mediator's duties and responsibilities. In other respects, they shall be interpreted and applied by the court.

Rule 15. Expenses, Mediator's Fee, and Deposits.

(a) Expenses. The expenses of a witness for a party shall be paid by the party producing the witness. All other expenses of the mediation, including necessary travel and other expenses of the mediator, the expenses of any witnesses called by the mediator and the cost of any evidence or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless the parties agree otherwise, or unless the court directs otherwise.

(b) Mediator's Fee. A mediator shall be compensated at a reasonable rate, agreed to by the parties, or as set by the court. The mediator's fee shall be borne equally by the parties, unless they agree otherwise, or unless the court directs otherwise pursuant to Rule 2.

(c) Deposits. Before the mediation process begins, each party to the process shall deposit with the mediator such an amount of the anticipated expenses and fees as the court shall direct or the mediator reasonably requires. When the mediation process has been terminated, the mediator shall render an accounting, requiring payment of additional expenses and fees by the appropriate parties, or returning any unexpended balance to the appropriate parties.

Rules of Appellate Mediation

Current with amendments ratified through June 2008

Rule 1. Overview and Scope of Appellate Mediation Program.

(a) Scope. The appellate mediation program, established in the Supreme Court of Alabama and the Alabama Court of Civil Appeals pursuant to Rule 55 of the Alabama 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 employee of the respective court. The appellate mediation office shall be located in the judicial building in Montgomery, Alabama.

(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 55, Ala. R. App. P., and to provide a mechanism for returning the case to the ordinary appeal process where mediation has not resolved the case.

(b) Eligible Cases. All civil matters within the jurisdiction of the Supreme Court of Alabama or the Alabama Court of Civil Appeals, where 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 docketing statement (Form 24 or 25, Appendix I, Alabama Rules of Appellate Procedure; see Rule 3(e), Alabama 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 and 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) Matters Not Stayed. The filing of a cross-appeal or any appeal related to a case in which the appellate process has been stayed pursuant to subdivision (d) 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. If parties agree 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 approved appellate mediators. An approved appellate mediator is someone who:

A. Is a former justice or judge of an appellate court of this State in good standing with the Alabama 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 Alabama 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 Alabama Code of Ethics for Mediators;
5. Has agreed to be bound by these Alabama 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 Alabama 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. Has successfully completed the six-hour appellate mediation course approved by the appellate mediation office;
3. Is on the Alabama 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 Alabama Code of Ethics for Mediators;
6. Has agreed to be bound by these Alabama 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) Nonroster Mediator. Nothing in these Rules prevents the parties from choosing their own mediator, so 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 to 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 Alabama Code of Ethics for Mediators;
C. Has agreed to be bound by these Alabama 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 Alabama Code of Ethics for Mediators, Standard 5, subsection (b). 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 Rule 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 the 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 the Alabama Code of Ethics for Mediators.

(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 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. Such 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 or 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 if 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 their case. 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 appointments 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 Alabama and the Alabama Court of Civil Appeals for:
(1) Violating Rule 55, Ala. R. App. P., the Alabama Appellate Mediation Rules, or the Alabama Code of Ethics for Mediators;
(2) Failure to remain in good standing and abide by the standards of practice established by the Alabama State Bar or the Alabama 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 so as 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 to 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, if any.
(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.
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 (i) 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 to the satisfaction of the fact-finder;
(2) the history of any 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 impact the resolution of the appeal;
(8) identification of the individual or individuals and counsel the parties believe should be directly involved in the settlement discussions;
(9) a description of any sensitive issues that may not be apparent from the court records, but that may or will influence the settlement negotiations;
(10) the nature and extent of the relationship between the parties or their counsel;
(11) the parties' priority of interests;
(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 suggested 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 client; 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 proceedings of the court and shall be conducted with that spirit in mind. The mediation process is nonbinding, so 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 history of any efforts to settle the case;
(3) the parties' underlying interests, preferences, motivations, assumptions, and new information or other changes that may have occurred;
(4) future events based upon the various outcome alternatives of the appeal;
(5) how resolution of the appeal impacts the underlying problem;
(6) cost-benefit and time considerations; and
(7) any procedural alternatives possibly 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 or sessions, unreasonably delays the scheduling of mediation, or otherwise unreasonably impedes the conduct of the program, 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 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 as to any matter as a result of 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 the fact in the Mediator's Report. Such 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, Alabama Rules of Appellate Procedure. (See Rule 7 of these Rules.)

(b) Evaluations. At the conclusion of all mediation proceedings, 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, Alabama 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 the parties' reaching 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 course 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 Alabama Rules of Appellate Procedure.

There shall be no reference, whatsoever, in any appellate motions, briefs, or argument to the appellate mediation program or to the fact 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) the fact 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 party's or counsel's complaints or concerns 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 complaints shall not be addressed to the Supreme Court of Alabama, the Alabama Court of Civil Appeals, 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) These Rules govern the procedure for all matters in appellate mediation. If no procedure is specifically provided in these Rules or by statute, the Alabama Court Civil Mediation Rules shall be

applicable to the extent not inconsistent herewith.