

RHODE ISLAND SUPREME COURT APPELLATE MEDIATION PROGRAM

WHAT YOU NEED TO KNOW AS A CLIENT

What is appellate mediation? Appellate mediation is a process designed to dispose of a case pending before the Supreme Court through negotiation, compromise and agreement by the parties. The court does not decide the case outcome- the parties do.

How does mediation work? You and the other party (parties) to the case on appeal meet with the mediator to discuss the possibility of settlement by agreement. At this meeting, the mediator discusses the facts, the history of the case and the applicable law with you and your attorney separately or sometimes with the other side present. Such discussions enable both parties to tell their sides of the contested matter to a neutral legal expert with the aim of seeing whether common ground exists upon which to structure a compromise settlement.



How does mediation differ from a trial? The most important difference involves your own control over the case. When parties decide to resolve their disputes through litigation, they give up control of the case and allow the Supreme Court to decide the matter. Parties at mediation on the other hand, retain complete control of their case; they are free to negotiate a settlement through compromise by give and take but are not forced to do so. In addition, any information the parties want to present to the mediator is allowed. The rules governing limitations on evidence simply don't apply. Third, at mediation, a party can, and often does, meet with the mediator privately and confidentially (unless the party instructs otherwise). Such sharing of information is not only allowed, it is a necessary part of successful mediation.

What is the role of the mediator? Although your mediator is a retired judge, at mediation he or she assumes a totally different role. Unlike a judge hearing your case in court, the mediator-justice does not decide the case, does not decide what facts are true, and he or she issues no orders without the approval of the parties. The mediator's function is to hear the parties, to facilitate the sharing of information when authorized, and most importantly to see whether the respective wants or needs of the parties are such that a compromised settlement is possible. If asked, a mediator may give his or her opinion of the merits of the case, but in such cases the opinions are given privately to a party so free expression and frank exchanges can take place.

What is the role of your attorney? As at trial, your attorney at mediation remains your advocate. At mediation however, his or her function changes from that of proponent and interrogator to a negotiator and compromise seeker. The difference is critical and involves looking at the other party not as "the enemy" but as a fellow negotiator with whom you have something in common, such as an interest in settling the case. For mediation to succeed, your lawyer and you must discard "the winner-loser" fixation which is the denominator at trial. This involves you and your attorney keeping an open mind to any settlement offered at mediation that accurately reflects possible risks and rewards. In the end, only you can decide if what is offered in settlement will satisfy you, and whether to continue on or end the matter.



What are the advantages of a mediated settlement of your case? Few cases on appeal are crystal clear and typically each party has facts or law that could support their position. Neither side can really know for sure whether they will win the case on appeal. The advantage of settling at mediation is that both sides leave with something they want, whereas if the Court decides, there is a winner and a loser. And in some cases, the Court decides not to give everything the winning party wanted. Settling at mediation saves time and money; it allows the parties to put the matter at issue behind them quickly and to get on with the rest of their lives.

What does it take for mediation to succeed? Each party must be truly open to settlement. Each must understand both the risks involved in continuing the case for decision by the Court and the rewards that come with a compromise based on mutual needs and wants.

Is mediation mandatory and what happens if mediation fails? Yes. All parties and attorneys must deal and bargain with each other in good faith at the mediation meeting. If you fail to reach an agreement, your case will continue on appeal before the Supreme Court.

Can I still settle my case by agreement if mediation fails? Yes. You can and should continue to seek settlement through compromise until the Court renders its decision.