ARTICLE I. APPELLATE PROCEDURE

Rule 35. Appellate Mediation Program

(a) ***Purpose of the Rule.*** The purpose of this rule is to afford a meaningful opportunity to the parties in all eligible civil appeals to achieve a resolution of their disputes in a timely manner as early in the appellate process as feasible through the assistance of the Supreme Court Appellate Mediation Program and with the help of designated mediators.

(b) ***Eligibility.*** All civil cases that have been appealed from a trial court will be eligible for participation in this program with the following exceptions:

(1) Applications for post-conviction relief;

(2) Petitions for habeas corpus;

(3) Cases brought by prisoners in the custody of the Department of Corrections;

(4) Cases in which one or more parties are not represented by counsel (unless specifically included at the direction of the Court or by order of a mediator-justice);

(5) Appeals from the Family Court;

(6) Juvenile cases;

(7) Petitions for extraordinary relief, including all prerogative writs, provided, however, that a petition for a prerogative writ brought originally in this Court may be assigned to the Appellate Mediation Program by order of the Court at the time the prerogative writ is issued;

Criminal cases will not be included in the Appellate Mediation Program. Criminal cases will be construed to include cases on review from traffic tribunals of the state or municipalities, or adjudication of offenses by municipal courts, however designated.

The Appellate Mediation Program shall use its discretion in determining the assignment and scheduling of civil cases that meet the requirements for eligibility and are appropriate for mediation. Any civil case that has been appealed from the trial court may be directed by the Court to participate in the Appellate Mediation Program.

At any time during the appellate process, the Supreme Court may order participation in the program, or any party in a civil case may request participation in the program on a voluntary basis.

(c) ***Mediators.*** Mediators will be designated retired justices of the Supreme Court, retired justices or judges of trial courts, other judges, or persons who may from time to time be designated by the Chief Justice in a particular proceeding.

(d) ***Modifications of Procedures Relating to Cases Eligible for Mediation.*** Within twenty (20) days of filing a notice of appeal, all parties shall complete a mediation statement on a form provided by the Appellate Mediation Office to be filed with the Appellate Mediation Program.

The mediation eligibility portion of the form (Part I) shall enable the Appellate Mediation Program to determine whether the case is eligible and appropriate for mediation, and shall include the procedural history of the case, including the type of judgment entered, the amount of any monetary judgment and/or injunctive relief, the facts giving rise to the initial dispute, the history of negotiation, including any demand(s) that have been transmitted by the plaintiff(s), as well as any counteroffer(s) that have been made by the defendant(s). Counsel for the plaintiff(s) or other claimant(s) will include a list of out-of-pocket expenses upon which the claim(s) for compensation is based in whole or in part, as well as a description of physical and other injuries upon which the claim(s) for compensation is based. An original and two copies of the mediation eligibility portion of the form must be provided to the Appellate Mediation Program and one copy must be provided to all opposing counsel.

If the case is eligible for mediation, the parties shall also include a confidential mediation statement (Part II) with the mediation eligibility form to be filed with the Appellate Mediation Program. The confidential mediation statement shall include significant factors that could affect the party's chances of prevailing on appeal, a description of why past efforts at negotiation have failed, the priorities of the parties and possible acceptable outcomes to the mediation process. The statement should be sufficiently detailed to enable the mediator-justice to determine the areas of agreement and disagreement and to consider any other relevant information that would assist the mediator in the resolution of the dispute. To maintain the confidentiality of the mediation process, the confidential mediation statement shall be sent only to the Appellate Mediation Program and shall not be provided to opposing counsel. Counsel may be required to supplement a mediation statement with additional relevant information at any time prior to the mediation session.

As a condition for participation in mediation, the parties shall include a statement that counsel has been authorized to negotiate on behalf of the client(s), with full authority to make and/or accept offers. If counsel is not so authorized, arrangements must be made to have the client(s) or authorized representative(s) available at the mediation session, or available for consultation by telephone at the time of the mediation session. At any time during the mediation process, the mediator-justice may request the record be transferred for reference at his or her discretion.

In the event that the judgment has not included all parties or all claims for relief, a judgment shall be requested in the trial court pursuant to Rule 54(b).

(e) ***Ordering of Transcript, Transmission of the Record, and Filing of Briefs.*** In order to expedite the mediation process and spare the parties as much initial expense as possible, the time for ordering of the transcript in Rule 10(b)(1) with respect to cases eligible for mediation, shall be extended to a date sixty (60) days from the filing of the notice of appeal, and the time for transmittal of the record of the trial court to the Supreme Court under Rule 11(a) shall be extended to a date sixty (60) days from the date of the ordering of the transcript. The rules of appellate procedure are not suspended during participation in the Supreme Court Appellate Mediation Program except as expressly provided for herein.

(f) ***Mediation Session.*** At the time of the mediation session, counsel for the parties should have had a prior meeting with their clients and opposing parties in order to seek as much agreement on issues, including settlement issues as possible. Counsel should have obtained authority from their client(s) to make demands and counteroffer(s) to the fullest extent possible. Client(s) and/or representatives of client(s) should be available at the mediation session or by

telephone in order to furnish additional authority that may be required in order to achieve a successful mediation in the course of the session.

(g) ***Confidentiality.*** All documents filed, and statements made in furtherance of mediation, including, but not limited to, the history of negotiation, listing of out-of-pocket expenses, injuries, responses by the parties, counteroffers, and memoranda relating to the narrowing of issues, will be confidential. The only portion of the mediation process that will be public is the fact that the session took place and that the case has been settled, if such a result is reached.

(h) ***Sanctions.*** A party or counsel for a party who fails to participate in a mediation session after notice, or fails to provide the necessary preliminary documents and other information required for a meaningful mediation session, or fails to keep confidential any mediation statements or documents, or fails to participate in the mediation session in good faith, or otherwise fails to follow the provisions of this Rule, may be prohibited from filing further pleadings with the Clerk of the Supreme Court relevant to the pending appeal, or otherwise be subject to sanctions to be imposed after hearing by the Court or the mediator-justice. Sanctions may be brought either on motion by a party, or by the mediator-justice or the Court. Such sanctions may include monetary fines, costs, counsel fees, or orders that may deny or grant relief to appellant(s) or to appellee(s) as circumstances and justice may require.