

# MINNESOTA COURT OF APPEALS FAMILY LAW APPELLATE MEDIATION POLICIES AND PROCEDURES

These policies and procedures provide guidelines for the court and direction for the Family Law Appellate Mediation Office. This document is intended to be informational only and does not bind the court or preclude periodic changes to review and refine our policies and procedures.

## **Forms and Scheduling**

### **Origination of Mediation Process by Transfer of Copy from Clerk's Office**

As soon as practicable, and in ordinary circumstances within two (2) business days after a family law appeal eligible for mediation, as defined in Spec. R. Pract. Governing Family Law Appellate Mediation 1(b), is filed with the office of the Clerk of Appellate Courts, the clerk shall send a copy of the file to the Family Law Appellate Mediation Office.

### **Screening**

Every family law case eligible for family law appellate mediation shall be screened as soon as practicable, and in ordinary circumstances within two (2) business days after it is filed with the Clerk of Appellate Courts, to determine whether it has been timely filed. This screening will take place before it is processed by the Family Law Appellate Mediation Office. Untimely appeals shall not be mediated.

The Family Law Appellate Mediation Office shall screen all family law case files sent to the Family Law Appellate Mediation Office to determine if it should be accepted into the Family Law Appellate Mediation Program. This initial determination shall be based on the issues and the location of the parties. If the case is not accepted into the Family Law Appellate Mediation Program, the Family Law Appellate Mediation Office shall alert the Clerk of Appellate Courts and central staff that the case shall not be mediated, and a central staff attorney shall draft an order with timelines for the appeal.

### **Domestic Violence Protocol**

The Family Law Appellate Mediation Program monitors for domestic violence at the following four times in the mediation process: (1) initial screening by the Family Law Appellate Mediation Office, (2) review by the Family Law Appellate Mediation Office of the Confidential Information Form, which provides an opportunity to request an exemption, (3) review of the file by the assigned mediator who is qualified under Rule 114.13(c) of the Minnesota General Rules of Practice for the District Courts, and (4) communication between the assigned mediator and the parties.

## **Exemptions**

In an effort to allow every party to mediate, mediation shall be the presumptive course for all cases. When a party submits the confidential information form with a written request and reason for the case to be excluded from the Family Law Appellate Mediation Program, the Family Law Appellate Mediation Office, consistent with its established mediation policies, has the discretion to exempt the case from the mediation program.

## **Forwarding Confidential Information Form and Mediator Selection Form to the Family Law Appellate Mediation Office**

When a confidential information form, mediator selection form, or any other document intended for the Family Law Appellate Mediation Program is inadvertently submitted to an office other than the Family Law Appellate Mediation Office, the documents should be forwarded through interoffice mail as soon as possible to the Family Law Appellate Mediation Office, MJC 255G.

## **Mediator Selection/Fees**

### **Appellate Mediator Roster**

- (a) Appointment to the Appellate Mediator Roster. In accordance with Rule 9, the court shall maintain a roster of approved appellate mediators and shall recruit mediators as needed throughout the state. To be eligible for the roster, a mediator must be a qualified family law facilitative neutral under Minnesota General Rules of Practice for the District Courts Rule 114 and must complete an application as required by the court. Preference shall be given to applicants who have substantial work experience as family mediators and who have family law and appellate experience.
- (b) Appellate Mediator Training. Mediators selected for the roster must complete a one-day interactive training sponsored by the court that provides the history, context, and process of appellate family mediation as well as the implications of domestic violence for the mediation process. To maintain roster eligibility, appellate mediators must, as feasible, attend periodic court-sponsored meetings and training events.

### **Assignment of Mediator**

- (a) For each case to be mediated, the Family Law Appellate Mediation Office shall provide to the parties a list of potential appellate mediators and a description of each appellate mediator's qualifications and background.
- (b) The parties shall rank their preferences for the appellate mediator to be selected and provide their preferences to the Family Law Appellate Mediation Office.
- (c) The Family Law Appellate Mediation Office shall assign an appellate mediator to the case based on all relevant factors including but not limited to, the parties' preferences, the appellate mediator's availability, the appellate mediator's geographical location, and the appellate mediator's expertise.

### **Agreement to Mediate**

Prior to the commencement of mediation, the parties, their counsel and the mediator shall sign a written agreement to mediate, which shall address the following terms:

- (a) The process to be followed in mediation;
- (b) The fees to be charged by the mediator (including appropriate terms to assure prompt payment);
- (c) Confidentiality of the process;
- (d) The method of documenting and implementing agreements reached by the parties; and
- (e) Compliance with Rule 114 of the Minnesota General Rules of Practice for the District Courts.

### **Appellate Mediation Fees**

- (a) The Family Law Appellate Mediation Office shall set the fee which each party shall pay to the appellate mediator. The Family Law Appellate Mediation Office shall inform the appellate mediator and each party of the fee to be charged to each party in the mediation process. The appellate mediator shall be paid for time expended in preparation and mediation at the hourly rate set for each party by the Family Law Appellate Mediation Office. The hourly mediation fee for each party shall be determined after taking into consideration the party's gross annual income as illustrated in the chart below, the hourly rate charged by the party's trial attorney and/or appellate attorney, as explained in the next paragraph, and any extenuating circumstances.
- (b) The preferred method of determining the hourly mediation fee for each party is to set the fee at half the amount of the hourly fee paid to that party's appellate attorney. If such information is not available, hourly mediation fees should be set at half the amount of the hourly fee paid to that party's trial attorney. If no information is available about the hourly fees of the party's attorney, or if the party has not been represented by counsel, the hourly mediation fee for that party shall be determined according to the party's gross annual income, according to the table below.

| <b>Party's Gross Annual Income</b> | <b>Hourly Mediation Fee for Party</b> |
|------------------------------------|---------------------------------------|
| Party with IFP Status              | \$50.00 Flat Fee                      |
| \$0 - \$49,999                     | \$50.00 per hour                      |
| \$50,000 - \$74,999                | \$75.00 per hour                      |
| \$75,000 - \$99,999                | \$100.00 per hour                     |
| \$100,000 - \$124,999              | \$150.00 per hour                     |
| \$125,000 - \$250,000              | \$200.00 per hour                     |
| Over \$250,000                     | \$250.00 per hour                     |

- (c) If the appellate mediator learns of additional information not available to the Family Law Appellate Mediation Office that would change the applicable rate, the appellate mediator shall promptly inform the Family Law Appellate Mediation Office of the additional facts. The Family Law Appellate Mediation Office shall make adjustments to the hourly rate as warranted.
- (d) The appellate mediator shall determine when payment to the appellate mediator is due and provide this notice in the agreement to mediate.

#### History

Adopted August 2, 2010

Amended February 7, 2011

Amended March 9, 2015

Updated February 20, 2025