

Mediation Program Policy (approved, 4.1.2025)

A. PURPOSE

The purpose of the Mediation Program is to facilitate settlement or simplification of appeals pending before the Court of Appeals and, when appropriate, of related litigation or disputes. This is a service provided by the Court to the parties at no cost to them.

B. LAW AND POLICIES GOVERNING THE OPERATION OF THE PROGRAM

The Mediation Program is governed by Rule 12-313 NMRA and the Mediation Procedures Act, NMSA 1978, §§ 44-7B-1 to -6 (2007), as supplemented by the Court's policies.

C. CONFIDENTIALITY

Confidentiality is governed by Rule 12-313(D); Sections 44-7B-4 and 44-7B-5 of the Mediation Procedures Act; and any orders entered in the case.

D. SCREENING CASES FOR MEDIATION

The ultimate decision on which cases are referred to mediation lies with the chief mediator. In making this determination, the chief mediator screens cases which are either sent by DACA pre-calendarizing, and/or by reviewing the pending general calendar cases. The chief mediator also considers requests made by a party to the appeal or a Court of Appeals judge, regardless of where in the process the appeal is.

E. SETTING CASES FOR MEDIATION

Once a case is referred to mediation, the chief mediator will send the appropriate division(s) of the Court an order of referral to the mediation program and will add the case to the mediation spreadsheet. If the chief mediator determines that a stay is appropriate, the referral order will describe the proposed stay, the nature and length of which will depend on the circumstances. A typical length is 30 to 90 days. Under no circumstances will referral to mediation relieve the parties of their obligations, under Rule 12-210(C)(1), to timely designate transcripts of proceedings, depositions, and exhibits as provided in Rule 12-211 NMRA and Rule 12-212 NMRA.

In conjunction with the referral of a case for mediation, the chief mediator will exercise their discretion to select the mediator, taking into consideration all relevant matters, including the nature of the case, conflicts of interest, the availability of mediators and the need to complete the mediation in a timely fashion, and any preferences stated by the parties or the mediator(s). Once a case is assigned to a mediator, the chief mediator will coordinate with the parties and the assigned mediator, providing whatever information and form(s) are necessary for each case.

F. MEDIATIONS

1. **Mediation Format, Procedures, and Timing:** The assigned mediator will determine the format, timing and procedures for the mediation and any pre-mediation submissions as they deem appropriate to the needs of the particular case, subject to the limitations set forth in Rule 12-313, the Mediation Procedures Act, this policy, and the orders that have been entered in the case. Mediations may be conducted by video conference or in-person. Mediations may be conducted in one session or in several, including shuttle mediation. If in-person mediation is appropriate, the mediation can occur at an agreed-to cost-free location provided by a party, or at the State Bar of New Mexico, through the agreement for no-cost room access for the Program. Court interpreters are available for mediations and must be arranged at least a week in advance.

Recognizing the importance of timely disposition of appeals, mediators should, within a week from being assigned a case, set a date for the mediation to occur. Mediators will make their best efforts to complete the mediation process before the stay expires. Mediators will give the chief mediator the date for the mediation as soon as practicable. Mediators may request an extension of the stay from the chief mediator when necessary and appropriate, and the chief mediator will determine whether to propose an extension to the Court. Mediators will complete and return the Case Form to the chief mediator no more than 3 days after the conclusion of the mediation process.

2. **Participation of Counsel and Parties:** Participation of counsel and parties in the mediation is governed by Rule 12-313(B) and any orders entered in the case.

G. POST-MEDIATION REQUIREMENTS

1. **Mediations that resolve cases:** If a case is resolved through mediation, the agreement must be reduced to writing and will be binding upon all parties to the agreement. The mediator will either themselves, or through a party, have the basic material terms of the settlement agreement committed to writing and have all parties give their assent either through email “reply all” or in writing in person before adjourning the mediation. The mediator will tell the parties how and when to move to dismiss the appeal pursuant to Rule 12-401(B)(1) NMRA. The mediator will promptly inform the chief mediator of the settlement, and the chief mediator will promptly inform the appropriate division(s) of the Court and update the mediation spreadsheet to reflect the settlement.

For cases that require approval from a trial court or administrative body, the chief mediator will prepare a proposed order of limited remand for an appropriate amount of time to allow the trial court or administrative body to determine whether to approve the settlement, usually between 30-90 days.

2. **Mediations that do not resolve cases:** If a case is not resolved through mediation, the mediator will inform the parties that the stay will be lifted. If the case is on the general calendar, the chief mediator may propose that the Court extend the time to file briefs. The chief mediator will promptly inform the appropriate divisions of the Court only that the

case did not settle, and the chief mediator will update the mediation spreadsheet to reflect the non-settlement.

H. SANCTIONS

As permitted by Rule 12-313(H), the court may impose sanctions if counsel or a party fails to comply with the rule or with a mediation order entered in the case. If a mediator believes that sanctions may be warranted, they will speak directly and confidentially to the chief mediator. If the chief mediator agrees that sanctions may be warranted, the chief mediator will notify the Chief Clerk of the Court, who will refer the matter to a panel of judges.