

15. APPELLATE SETTLEMENT CONFERENCE PROGRAM

Rule 15.05 APPELLATE SETTLEMENT CONFERENCE PROGRAM

(1) Cases Subject

(a) The procedures in this rule apply to cases filed in the Court of Appeals. The Chief Judge or the Chief Judge's designee shall determine the individual cases or categories of cases that may be included or excluded from the appellate settlement conference program (program). Upon the court's own motion, at any time, a panel of the Court of Appeals may refer a case to the program.

(b) (i) A settlement conference shall be held for any case assigned to the program. A person with authority to settle the case must be present at the program settlement conference unless that person's absence or appearance by telephone is approved prior to the conference by the program director. If the absence is approved, a person with authority to recommend settlement must be present.

(ii) After the first settlement conference is held, any party may withdraw from the program, except that the program director may require the parties to attend one or more additional conferences as the program director deems reasonable and necessary to facilitate a settlement. If the program director requires the parties to attend one or more additional conferences, the neutral's fee for any additional conference will be paid by the program and not by the parties.

(2) Supervising Judge and Program Director

(a) The Chief Judge shall have overall responsibility for the program but may appoint a supervising judge and a program director for the program.

(b) If a supervising judge is appointed, the supervising judge shall have the powers needed to administer the program. The Chief Judge, and the supervising judge if one is appointed, may delegate authority to the program director.

(c) If the Chief Judge, or the supervising judge if one is appointed, serves as a judge or judge pro tempore of the Court of Appeals, the Chief Judge or supervising judge may not participate in the consideration of any case in which the judge is aware of confidential information concerning the case obtained from the program.

(d) If a judge or judge pro tempore of the Court of Appeals serves as the neutral in a case and the case does not settle and proceeds in the Court of Appeals, that judge shall not

thereafter participate in any way in the case. Further, such judge shall take steps as necessary to insure that the judge does not disclose to other judges or to court staff any communication from the settlement conference.

(3) Neutrals

(a) The Chief Judge shall determine the responsibilities and qualifications of neutrals to be provided by the program and shall approve the neutrals selected for the program. The supervising judge, if one is appointed, or program director will assign neutrals for individual cases.

(b) A neutral shall not act in any other capacity in the case.

(4) Abeyance of Appeal

(a) (i) On assignment of a case to the program, the court will hold preparation of the transcript and the record, and briefing, in abeyance for a period of 120 days from the date of the notice of assignment of the case to the program. During that time, a party to the appeal may file an amended designation of record. A party wishing to hold in abeyance any other aspect of the appeal or seeking an extension of time to complete any other task required by law or by the Oregon Rules of Appellate Procedure must file an appropriate motion with the court.¹

(ii) At the end of the 120-day abeyance period, if the parties have engaged in settlement negotiations and need more time to reduce the settlement to writing or to implement a settlement, any party may request the program director to order, and the program director may order, an extension of the abeyance period for up to 60 days. If all parties to an appeal agree to an extension for longer than 60 days, the program director may extend the abeyance period for as long as reasonably necessary to implement a settlement.

(b) If a respondent files a motion to dismiss the appeal or an appellant files a motion to stay enforcement of the judgment when the case is being held in abeyance, in addition to serving a copy of the motion on all other parties to the appeal, the party shall serve a copy of the motion on the program director accompanied by a letter of transmittal stating whether the party prefers that the motion be decided before the case proceeds in the program. The program director may direct that the case proceed in the program or may terminate the referral. If the program director terminates the referral, the case may be re-referred to the program after the court disposes of the motion to stay enforcement or denies the motion to dismiss.

(c) The Chief Judge may reactivate a case held in abeyance at any time:

(i) At the request of the program director pursuant to the request of a party or on the program director's own motion; or

(ii) On motion of a party showing good cause for reactivating the appeal. In addition to serving a copy of the motion on all other parties to the appeal, a party filing a motion to reactivate shall serve a copy of the motion on the program director.

(5) Submission of Information

The parties may be required to submit information to facilitate the screening of cases for the program or the program settlement conference. The parties shall submit this information in a timely manner to the program director or the neutral as designated in the request. Each party also shall submit the requested information to the other parties, with the exception of material that is designated by the party as confidential, which shall be treated by the program director or the neutral as confidential pursuant to subsection (6) of this rule.

(6) Confidentiality

(a) Program settlement conferences are subject to ORS 36.210 to 36.238.

(b) All materials submitted to the supervising judge or to the neutral and all materials created by the supervising judge or the neutral that pertain to a program settlement conference and are not a part of the record on appeal shall be maintained separately from the record of the case. These materials shall not be subject to disclosure, except as the law may require or as the parties and the supervising judge may all agree. The materials referred to in this paragraph shall be destroyed at the time and in the manner prescribed by the policy adopted by the program director pursuant to the Task Force on Records Retention.

(c) The supervising judge or program director may request the parties or the neutral or both to provide oral and written evaluations of the case settlement process. The materials referred to in paragraph (6)(b) of this rule, and oral and written evaluations of the case settlement process, may be used to evaluate the program. Any evaluation of the program, whether disseminated to the appellate courts or to the public, shall not disclose specific case identifying information.

(7) Appellate Settlement Conference Program Fees

(a) For the purposes of this paragraph, multiple parties who are represented by the same attorney or attorneys shall be deemed to be a single party. Except as provided in paragraph (d) of this subsection, each party to the appeal who participates in the program shall pay the program fee prescribed in this subsection. Each party shall pay the program fee directly to the neutral or, if instructed by the program director, to the Judicial Department Appellate Settlement Conference Program Account.² Except as provided in paragraph (f) of this subsection, each party shall pay the program fee no later than the date of the first settlement conference. In workers' compensation cases, each party shall pay a fee of \$150; in all other cases, each party shall pay a fee of \$350.

(b) (i) The program fee shall cover up to five hours of settlement conference time whether or not the settlement conference involves more than one session.

(ii) In unusual cases, if the neutral reasonably needs more than one hour of preparation time, the neutral may contact the program director and the program director may contact the parties to discuss whether to exclude the additional preparation time from the five-hour settlement conference time.

(iii) If the parties agree to extend the settlement conference beyond the initial five hours, the parties shall compensate the neutral for any additional time that is expended and recorded by the neutral, with the total cost of the additional time being shared equally by the parties. The rate shall be \$150 per hour.

(c) If an individual or entity who is not a party to the appeal participates in the settlement conference as part of an attempt to reach a global resolution of a dispute or disputes outside the scope of the appeal but involving some or all of the parties to the appeal, the program director may require each such individual or entity to pay the mediation fee prescribed in paragraph (a) of this subsection.

(d) The Chief Judge or the Chief Judge's designee may waive or defer payment of the program fee on motion of a party based on a showing that the party is financially unable to pay the fee without substantial economic hardship in providing basic economic necessities to the party or the party's dependent family. If liability for payment of a party's share of the program fee is waived or deferred, that party's portion of the program fee shall be paid by the program from funds appropriated for that purpose.

(e) When a settlement conference is conducted by a neutral, an administrative law judge, "Plan B" retired judge, or other person who does not accept a fee for the services, the parties shall make the program fee payable to the Judicial Department Appellate Settlement Conference Program Account and mail it to: Appellate Settlement Conference Program, 1163 State Street, Salem, OR 97301-2563.

(f) A party whose program fee is deferred and who has not paid the fee by the conclusion of the settlement conference shall remain liable for the unpaid fee, unless the fee is waived following completion of the settlement conference. If a party's program fee has been paid by the program and the party thereafter pays the fee, the fee shall be paid to the program as provided in paragraph (e) of this subsection.

(8) Actions Are Not Reviewable

Except as necessary to decide a motion for sanctions under subsection (9) of this rule, the actions of a neutral, a program director, or a supervising judge shall not be reviewed by the Court of Appeals or by the Supreme Court.

(9) Sanctions

At the request of the program director, the court may impose sanctions against a party, or counsel for a party, or both, for the failure of the party, or counsel, or both to perform any act required by this rule or by the written policies of the Appellate Settlement Conference Program. Sanctions include but are not necessarily limited to monetary assessments and dismissal of the appeal.

¹ See ORAP 3.40 regarding the due date of a motion to correct a transcript filed while an appeal is being held in abeyance pending mediation under this rule.

² Whenever the program fee is payable directly to the program, the check should be made payable to "A.S.C.P., Or. Judicial Dept." and mailed or delivered to: Appellate Settlement Conference Program, 1163 State Street, Salem, OR 97301-2563.

See ORS 2.560(3).