



Hawai'i Appellate Mediation Program

**Solutions
Satisfaction
Success**

Mediation. It Works!

Background

The Judiciary's mediation program for appeals in civil cases began in 1995. The Center for Alternative Dispute Resolution (Center) administers the Hawai'i Appellate Mediation Program (Program). The main objective of the Program is to provide an alternative to litigation on appeal.

Inclusion In The Program

Most civil cases on appeal are eligible for the Program. A Notice of Mandatory Mediation is sent to parties whose cases are selected for mediation. If a case is not selected, a party may request voluntary participation.

Mediation

Mediation is an informal, private process to help parties discuss, define, and resolve their dispute. The parties control the result of their mediation using a mediator – an impartial person – to guide the process. The mediator does not make decisions for the parties.

The Mediators

The appointed mediators generously volunteer their time. The mediators are retired judges or justices, and retired or semi-retired counsel.

Parties may agree on a private mediator. They are then jointly responsible for the mediator's fees. Private mediators must also follow the Program rules.





Before The First Meeting

Parties are required to submit an information packet and interest statement to the mediator, usually two weeks before they meet. These requirements are specified in the initial notice the parties receive from the Center.

At The First Meeting

The mediator generally:

- Meets with everyone to explain the goals and asks the parties to agree on ground rules, including privacy about what is said in mediation;
- Explains the private nature of mediation and the prohibition against informing the court about the content of the mediation;
- Asks parties for a brief summary of the dispute, issues on appeal, and settlement history;
- Works with the parties in private sessions to understand each side's legal and settlement positions and to help assess the benefits, risks, and costs of various options;
- Initiates and conducts negotiations;
- Files an order informing the court whether the case settled.

How To Prepare For Mediation

There are basic requirements for an effective mediation process. Attorneys/ Parties should

- Read all correspondence from the court about the Program requirements.
- Review Rule 3.1(e) of the Hawai'i Rules of Appellate Procedure regarding the stay of preparation of the record on appeal.
- Review the Program Rules, being sure to note the discretion delegated to the mediator (Rule 6) and the Center (Rule 10) to ensure an efficient and fair process.
- Bring relevant documents.

Court rules are online at:

www.state.hi.us/jud/toc.htm



Advantages Of Mediation

- **More Control Over The Outcome.** Mediation steps away from the win/lose model of litigation, allows for a wider discussion of the issues, and searches for solutions that everyone can accept.
- **Private.** Mediation is private. Program rules prohibit the mediator or the parties from communicating with the court regarding the mediation. See Rule 8 of the Program Rules for details.
- **Informal.** The Rules of Evidence and other requirements of a court proceeding do not apply.
- **Faster.** Usually mediation is scheduled much sooner than a decision is reached on appeal.
- **Maintains Relationships.** Parties may need to have regular contact after their dispute is resolved (family and business matters, for example). A mediated agreement may include ways to deal with one another to avoid future disputes.





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