

## **Minnesota's New Appellate Mediation Program**

**By Judith Rush**

Minnesota's pilot family appellate mediation program is showing signs of success. The program, which began in September 2008 supported by a State Justice Institute grant, requires all family law cases filed with the Court of Appeals to be diverted to mediation.

The goals of the mediation process are to increase efficiency, reduce costs of litigation and court costs, encourage voluntary settlement, enhance litigation satisfaction, and reduce conflict levels. The key to meeting these goals is getting the parties to the table early, before they have to pay for transcripts, briefs, and oral arguments. This is accomplished by swift issuance of an order staying the appellate process. The order, generally issued within ten days of filing the appeal, requires the parties to fill out a confidential information and mediator selection form within two weeks of the Order. Parties choose from among a panel of 12 attorney mediators from around the state who have agreed to charge one-half of the hourly rate each party pays for his or her attorney or a sliding scale if the party is unrepresented by counsel.<sup>1</sup>

Unless a party opts out of the mediation process because of domestic abuse or another reason the Court considers compelling, a mediation planning phone conference will be scheduled in short order to discuss the case and the process, identify any concerns or necessary information exchanges, and schedule the first mediation session.

The process is confidential and must be completed within 90 days of the initial mediation order. If a party refuses to cooperate, the matter will be returned to the appellate docket, and the Court may impose sanctions for causing unreasonable delay or conduct that impedes the process.

Mediators involved in the program are seeing the success. RCBA Board Member and Mediator Mike Black says it has been an unqualified success for the parties he has worked with. Steven Schmidt agrees, particularly when trial counsel rather than appellate counsel participate in the mediation. Appellate counsel can continue to be a resource for the client since client has to consider the likelihood of prevailing, the result

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<sup>1</sup> On average, the appellant have been paying \$131 per hour, while respondents have been paying an average of \$127 per hour for an average of six hours of mediation.

of prevailing, which may be remand rather than reversal, and the ongoing uncertainty, all of which provide incentives to settle. Other benefits to settling include reduction of conflict, higher satisfaction because of the parties' willing participation in the process and cost savings.

Implementation of the program has been fairly seamless. Counsel commencing a family law appeal should be aware that the Order initiating mediation will not issue until the appeal has been perfected. A delay in payment of the filing fee, for example, will result in a delay in the Order. In the meantime, a transcript may need to be ordered<sup>2</sup>. Other glitches that may occur include appellate counsel not receiving a copy of the Order where trial counsel is also counsel of record; the court reporter may not receive the Order staying the preparation of the transcript. Counsel should know enough about the process and follow up to make sure the process works as intended during its pilot phase.

Early results show that almost one quarter of the parties have opted out and a small percent of cases were dismissed. Half of the remaining cases have been resolved and half have been placed back on the appellate docket. Those who have settled gain finality approximately eight months before the appellate process would have been concluded. Time will tell whether the benefits of the program justify the cost to continue the program, but it is certainly a step in the right direction.

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<sup>2</sup> The Rules of Appellate Procedure require the transcript to be ordered within ten days of filing of the notice of appeal. Delay in processing of the order may result in the transcript being ordered.