

IN THE SUPREME COURT OF ALABAMA
July 17, 2003

ORDER

WHEREAS, this Court's Standing Committee on the Alabama Rules of Appellate Procedure recommended the adoption of a rule that allows mediation in cases at the appellate level; and

WHEREAS, this Court has considered the proposed rule;

NOW, THEREFORE, IT IS ORDERED that Rule 55, Alabama Rules of Appellate Procedure, be adopted to read in accordance with Appendix A attached to this order;

IT IS FURTHER ORDERED that a court comment to that rule be adopted to read in accordance with Appendix B attached to this order;

IT IS FURTHER ORDERED that the adoption of this rule and the comment shall be effective October 6, 2003;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 55:

"Note from the reporter of decisions: The order adopting Rule 55, effective October 6, 2003, is published in that volume of the Alabama Reporter that contains Alabama cases from ___ So. 2d."

Moore, C.J., and Houston, See, Lyons, Brown, Johnstone, Harwood, Woodall, and Stuart, JJ., concur.

APPENDIX A

RULE 55. APPELLATE MEDIATION

(a) Introduction. An appellate court may direct the attorneys for the parties and the parties to appear before an approved mediator, who may be designated by the Court.

(b) Attendance at sessions. Parties with full settlement authority and parties' counsel are required to attend mediation, unless excused from attendance by the mediator.

(c) Privileged discussions. The content of mediation discussions and proceedings, including any statements made or documents prepared by any party, attorney, mediator, or other participant, is privileged and shall not be construed for any purpose as an admission against interest.

(d) Confidentiality. Statements and comments made during mediation conferences and in related discussions are confidential and shall not be disclosed to the appellate court. Appellate mediators shall not be called as witnesses, and the information from the mediation, except for failure of a party or counsel to comply with this rule, shall not be disclosed to judges, staff, or employees of any court; provided, however, that it shall not be a violation of this subsection (d) to disclose to the appropriate person or entity such information as may be necessary to track the mediation and appeal process. The purposes of disclosing such information are to maintain status records and statistics, to ensure orderly compliance with this rule, and to provide a mechanism for returning the case to the ordinary appeal process where mediation has not resolved the case. Notwithstanding the foregoing, the bare fact that a settlement has or has not been reached as a result of mediation shall not be considered confidential.

(e) Mediation not binding. No party shall be bound by anything said or done at a mediation session unless a settlement is reached and the agreement is reduced to writing.

(f) Noncompliance. Failure to comply with this rule may result in the imposition of sanctions, including dismissal of the appeal.

APPENDIX B

Court Comment to Adoption of Rule 55
Effective October 6, 2003

At the time of the adoption of this rule, the Supreme Court was considering the adoption of Appellate Mediation Rules to facilitate the mediation process; however, those rules had not yet been drafted. The intent of this rule is to permit and encourage mediation at the appellate level. The rule contemplates that statements and comments made during the mediation process shall be privileged and confidential, but it recognizes that it may be necessary to divulge certain information to the person appointed by the court to track the mediation, who may be an employee of the court. The Judges or Justices of the court in which the appeal is pending may be advised of whether the parties have reached a tentative agreement but need more time to reduce the agreement to writing, or whether the parties need more time to continue mediation, or whether the mediator has determined that additional time for mediation would not be productive. No other information about the mediation shall be conveyed to the Judges or Justices.