

COURT OF APPEALS OF OHIO
FOURTH DISTRICT COURT OF APPEALS
LOC.R. 22 PREHEARING CONFERENCE PROCEDURES

Pursuant to App.R. 20 and Loc.R. 22, the Court conducts a prehearing mediation conference to encourage and facilitate the settlement and resolution of civil and administrative appeals. The conferences afford litigants the opportunity to candidly evaluate their cases with an informed neutral and to explore the possibilities for voluntary resolution of the litigation. The following are some answers to commonly asked questions about the procedure:

How are cases selected for prehearing mediation conferences? All civil and administrative appeals are eligible for mediation. Cases are selected by the Court, but counsel may also confidentially request a prehearing conference. The Court may grant these requests at its discretion.

How are counsel advised that their appeal has been selected for a prehearing mediation conference? Counsel receive a Notice of Loc.R. 22 Conference advising them of the date and time of the conference, whether it is to be held by telephone or in person, and where it will be held if in person.

Why are conferences scheduled shortly after the notice of appeal is filed? Loc.R. 22 conferences are held shortly after the notice of appeal is filed so that resolution of the appeal or settlement of the case can be explored prior to the parties incurring further cost and expense on appeal.

Are the times on appeal suspended upon notice of a Loc.R. 22 conference? No. The times on appeal continue running as usual. However, a request for a continuance can be made by written motion or by contacting the court mediator at (740) 357-4455. The Court may grant the request if it is deemed to be conducive to the mediation process.

What if I have an unavoidable conflict with the scheduled date and time? If you need to reschedule because of a previously scheduled court appearance, planned vacation, or unforeseen emergency, please immediately call the court mediator at (740) 357-4455. Alternative dates and times will be provided to you. It is the duty of the rescheduling attorney to contact all other counsel in the case to arrive at a mutually agreeable date and time and then to promptly notify the court mediator of the rescheduled date and time.

Is participation in prehearing conferences optional? No. Participation is mandatory.

Must each party's lead attorney attend the conference? Yes. It is critical that each party be represented at the prehearing conference by the attorney who is not only conversant with the case, but is also the attorney on whose advice the client chiefly relies.

Are the parties required to attend the conference? If the notice indicates that client attendance is mandatory, the clients must be present with counsel at the prehearing mediation conference. If clients are not required to attend the initial conference, parties or their designated representatives with full settlement authority shall be available by telephone for the duration of the conference to

facilitate settlement discussions. Client participation is encouraged when it will be helpful or conducive to the settlement discussions.

What preparation is required of counsel? Counsel are to consult with their clients prior to the conference and obtain the requisite settlement authority. Care should be taken to include all the necessary "decision makers." Counsel are to be prepared to fully explore in good faith all options, avenues, and possibilities which might lead to a mutually acceptable resolution of the case. Counsel should also review their factual and legal interests prior to the conference. Discussion of settlement is not necessarily limited to the appeal itself. If settlement of the appeal will not dispose of the entire case or, if related litigation is pending or anticipated in other forums, counsel are encouraged to explore the possibility of a global settlement.

How long do conferences last? On average, the conferences last approximately one hour. However, the court mediator will afford counsel and the parties as much time as necessary to accomplish the purposes of the prehearing conference.

What takes place at the prehearing conference? While prehearing conference procedures are official proceedings of the Court, they are conducted in a relatively informal manner. Discussions are typically conversational rather than argumentative. Initially, procedural issues and questions are addressed. The primary substantive issues and anticipated assignments of error are then discussed. Thereafter, resolution is actively explored through the mediation process. The mediation focuses on possible outcomes on appeal, the risks and costs of further litigation, the interests and motivations of the parties, and the potential benefits gained by resolution of the appeal or settlement of the entire case. The court mediator typically meets jointly with counsel and the parties and then meets separately with each side in her role as mediator. Settlement options and proposals are thoroughly discussed. Resolution may or may not be reached during the initial conference. Following an initial conference, the court mediator typically initiates further discussions by telephone or e-mail, or will schedule follow-up conferences if helpful. By the conclusion of the prehearing conference process, the parties have either reached a resolution or have identified the remaining obstacles and areas of impasse.

What is the role of the court mediator in the prehearing conference process? The court mediator serves as a neutral and impartial mediator and may perform a variety of roles as may be conducive to the settlement process. She may act as a facilitator, moderator or intermediary. She may also act as a sounding board or a reality check. Typically, she will encourage neutral analysis rather than arguments and accusations. She will assist as needed in the generation of possible options for resolution and encourage collaborative problem-solving in the search for mutually agreeable terms. Throughout the mediation process, she will maintain the confidences of the parties and make no recommendation to the Court on the merits of the case.

Are pre-hearing conferences confidential? Yes. Pre-hearing conferences are confidential and off the record, unless the parties explicitly agree otherwise.

Do judges of the Court of Appeals know what transpires at prehearing conferences? No. Any settlement discussions or negotiations which have taken place at a prehearing conference remain confidential and are not revealed to the Court. The prehearing conference process provides appellate counsel and the parties with a confidential and credible, no risk and low cost

environment in which counsel and the parties can actively explore options and avenues of resolution which are consistent with the best interest of their clients. If no agreements are reached, the case is absolutely unaffected and those in the decisional process that might follow know nothing about the mediation discussions. The court mediator's notes and documents created for settlement purposes will not become part of the Court's file.

How can I best use the Loc.R. 22 conference to benefit my client? Recognize that the pre-hearing conference procedures provide a short window of opportunity to achieve a favorable outcome consistent with your client's overall interests and risks. While maintaining your role as an advocate, understand that the appellate mediation conference is essentially cooperative rather than adversarial. Take advantage on appeal of the opportunity to talk constructively and confidentially with counsel for the other parties. Listen closely to what the other participants have to say. Try to be as candid as possible without posturing. Be persuasive yet open to persuasion. Keep in mind that rigidly adhering to a predetermined "bottom line" is usually unproductive because your views about the case, based on new insights and information, often change during the course of the mediation process. This may lead to additional and unanticipated avenues and options for resolution and mutual gain.

How can a prehearing conference be requested? Counsel may confidentially request a pre-hearing conference by calling or writing Court Mediator, Nikki Smith-Kemper at Fourth District Court of Appeals, 612 Sixth Street, Suite D, Portsmouth, Ohio, 45662, (740) 357-4455, or Court Administrator Sharon Maerten-Moore at Fourth District Court of Appeals, 14 South Paint Street, Suite 38, Chillicothe, Ohio 45601, (740) 779-6662. Alternatively, counsel may request a conference by formal motion filed with the Court. If the request is granted, counsel will be notified that a conference has been scheduled.