



Alabama Center for Dispute Resolution

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THINGS WE KNOW ABOUT MEDIATION IN ALABAMA FROM CASES THAT HAVE ENDED UP IN THE APPELLATE COURTS

*Please refer to the digest of cases that accompanies this for complete citations. Page numbers for digest are provided. * Denotes divorce/family cases*

1. *An order to mediation is not a final appealable judgment. Matters have not been adjudicated. McNeill v. McNeill Pg. 7
2. There is a firewall between the appellate mediation office and the appellate courts. The court only knows that the case has gone to mediation (not about the mediation) when it is returned to the court from the mediation docket if the case does not settle. Confidentiality is a top priority. Southland Bank Pg. 2
3. If one party requests mediation the court must order it pursuant to §6-6-20 (b) Code of Alabama 1975. Ex Parte Morgan County Commission; Working v. Jefferson County Election Commission Both Pg. 3; * Mackey v. Mackey Pg. 9
4. You may abandon a request for mediation under §6-6-20 by how you proceed in the run up to trial. Waddell v. Colbert County-Northwest Alabama Healthcare Authority Pg. 14
5. Releases are important, as is their content. Lawyers should bring them. Mediators should remind them to bring them. Walton v. Beverly Enterprises-Alabama, Inc. Pg. 5
6. Negotiate to specific, measurable standards. Leave nothing to guess work. James v. City of Russellville Pg. 5
7. *Visitation plans in mediated agreements are subject to the court finding, after a hearing, that they are in the best interest of the child. S.A.N. v. S.E.N. Pg. 6
8. Rule 11 of the Alabama Civil Court Mediation Rules, Confidentiality, is not intended to prevent the injured party from proving fraud or mistake. *Dissent in* Cain v. Saunders Pg. 10
9. If there is fraud in procuring a mediated agreement (in this case, by not complying with a court-ordered discovery order) the injured party may be entitled to rescind the agreement. Elements necessary to establish that a mediated agreement is procured by fraud are set forth by the court. Billy Barnes Enterprises v. Williams Pg. 8
10. The party who seeks to set aside a mediated agreement on grounds of fraud has the burden of proof. In this case, proof that the other party had made some representation of material fact that

reasonably induced the movant to enter into the mediated agreement was not present. Berry v. H.M. Michael, Inc. Pg. 6

11. Fraud is a defense to specific performance of the mediated agreement. Harlan Home Builders, Inc. v. Hayslip Pg. 10

12. If you accuse a party of breaching a mediated agreement, you need evidence that they have done so. Here, you can read what is not sufficient enough for a breach. Williams v. Jackson Pg. 14

13. *When filing a motion to set aside a mediated agreement, a party may allege that he or she was not physically or mentally well on the day of mediation. Daniels v. Daniels p. 7

14. Don't forget liens when drafting a mediated agreement. Board of Trustees of the University of Alabama v. American resources Insurance Company, Inc. Pg. 7

15. Documents prepared for use in mediation should be labeled as such so they remain confidential under Rule 11 of the Alabama Civil Court Mediation Rules. Alabama Department of Transportation v. Land Energy, Ltd. Pg. 8

16. A mediated agreement that violates a statute may not be upheld. Purdue v. Green Pg. 12-13

17. When a nursing home resident is *not competent* when he or she is admitted, and the signature on the dispute resolution agreement (DRA) is a family member or next friend, then the resident and signer are not bound by the med/arb clause (apparent authority to the contrary), and neither is a third party legal representative, when asserting a malpractice claim against the nursing home. An incompetent is unable to empower an agent. The Court said that while the holder of a durable power of attorney may have been able to bind the resident to a DRA at time of admission, a family member or next of friend could not. SSC Montgomery Cedar Crest v. Bolding Pg. 14

18. *A court cannot rewrite the parties' mediation agreement to craft relief if the mediated -for remedy is not available after the mediation. The court can vacate the prior judgment and allow parties to remediate, set the case for trial, or other appropriate relief. Leverett v. Leverett Pg. 13

19. The fine for sanctions for not complying with a court's order to mediate may not take the form of workers' compensation benefits, but should be a separate award altogether. Dollar Tree Stores, Inc. v. Ates Pg. 15

20. *On mandamus, parties were prohibited from compelling mediator testimony regarding any aspect of the mediation when self-represented wife in divorce action sought to set aside a mediated agreement accusing mediator of giving legal advice and of coercion. Ex parte Sheila Stone Schoen September 5, 2013, Alabama Court of Civil Appeals. Pg. 15

21. *If you don't object to a judge questioning you regarding what went on in mediation you will be agreeing to the disclosure, and this is an exception to confidentiality under Rule 11(b)(1) of the Alabama Civil Court Mediation Rules, and not a violation of 11(c).
If you want pendent lite alimony arrearages (interlocutory) to be paid post final divorce, get them in the mediation agreement or file a motion for contempt before the mediation. Johnson v. Johnson Pg. 1