

Foreword

Although much has been written about mediation before trial, the benefits of mediation after the court or jury has issued its verdict have received much less attention. The authors of this book, Brendon Ishikawa and Dana Curtis—both outstanding, experienced appellate attorneys and neutrals—are filling this void. They have written a superbly organized and comprehensive book on appellate mediation that should serve as a guide for every appellate judge, lawyer, mediator, professor, or student engaged in the practice or study of appellate law.

The authors emphasize that appellate mediation is profoundly different from pretrial mediation. The appellate mediator should expand the parties' understanding of their own and the other parties' perspectives of the dispute, their needs and interests, and the legal risks and opportunities that exist and inform resolution. Therefore, the appellate mediator must understand the basics of appellate procedures, rules, and process. For instance, the only records that an appellate court has on appeal are the trial court records, and effective analysis of the case begins with the standards of review. Importantly, to the greatest extent possible, appellate mediation is much more client-involved; discussions should be problem-solving not argument-generating, should be collaborative and engaging rather than isolating, and should be facilitative rather than coercive or threatening. The parties' relationships, goals, and cultural differences should be considered, and therefore joint sessions are desirable.

This book includes important material on how to evaluate a civil appeal. The section on decision-tree analysis includes helpful worksheets for participants to calculate the value of a case. There are excellent suggestions on pre-mediation preparation including agreements as to confidentiality and logistics (serve food if possible!), explanations as to the role of the mediator and participants, communication guidelines, and an agenda for the mediation. The authors relate how to initiate a mediation, how to conclude a mediation, how to conduct post mediation follow-up, and what to do if the parties do not reach an agreement. Important practice tips and forms are included. Their final advice on how to grow an appellate mediation practice is invaluable.

Appellate mediation practice has become an important part of our justice system. Those who study this book will have all the tools necessary to become successful in this field.

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