

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ORDER ESTABLISHING APPELLATE MEDIATION PROGRAM

PRESENT: SLOVITER, Chief Judge; BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, and LEWIS, Circuit Judges

IT IS HEREBY ORDERED that appeals and petitions for review of agency action filed in this Court may be referred to the Appellate Mediation Program to facilitate settlement and otherwise to assist in the expeditious handling of the appeal or petition for review. Mediation will be conducted by a Senior Judge of the Court of Appeals, a Senior Judge of a District Court, or a Special Master. It is

FURTHER ORDERED that within ten days after filing (1) a notice of appeal in a civil case, or (2) a petition for review of an order of an administrative agency, board, commission, or officer, or (3) an application for enforcement of an order of an agency, the appellant or petitioner shall cause to be filed with the Clerk of the Court of Appeals, with service on all parties, an original and two (2) copies of a Civil Appeals Information Statement to be supplied by the Clerk's Office and a

statement of issues setting forth information necessary for an understanding of the nature of the appeal or petition for review.

A Special Master shall serve as the initial Program Administrator and, in cooperation with the Clerk, shall manage the Appellate Mediation Program. A party may request mediation, but the Special Master will determine which cases are appropriate for mediation and will assign the matter to a mediator.

The Clerk will provide the Special Master with a copy of the judgment or order on appeal, any opinion issued by the District Court or agency, the appellant's or petitioner's civil appeals information statement, LAR 26.1.1 statements, and all relevant motions. Following review of these materials, the Special Master may refer an appeal or petition for review to a Senior Judge or to himself or herself for mediation. The Special Master shall advise the chosen mediator, parties, and the Clerk of the referral.

Within fifteen days of the case's selection for mediation, each counsel shall prepare and submit to the mediator a position paper of no more than ten pages, stating counsel's views on the key facts and legal issues in the case. The position paper will include a statement of motions filed in the Court of Appeals and their status. Copies of position papers submitted by the parties directly to the mediator need not be served upon opposing counsel unless the mediator so directs. Documents prepared for mediation sessions are not to be filed with the Clerk's Office except as noted below.

The mediator to whom the appeal or petition for review is assigned shall direct the attorneys and, where the mediator deems appropriate, the parties to attend a mediation session to be held as soon as practicable to consider the possibility of settlement and any other matters which the mediator determines may aid in the handling or the disposition of the proceeding.

The mediator to whom an appeal or petition for review is assigned for mediation shall advise the Special Master and the Clerk of dates set for mediation session(s), provided that the initial mediation session shall be held prior to issuance of the briefing order. At the conclusion of that session, the Judge or Special Master shall determine whether future sessions are necessary and shall advise the Clerk of any scheduled future mediation sessions.

Mediation session(s) must be attended by the senior lawyer for each party responsible for the appeal or another person with actual authority to negotiate a settlement of the case. In cases involving the United States government, senior attorneys on either side of the case may attend mediation session(s) as long as someone with settlement authority can be reached during mediation session(s); it is the specific responsibility of United States Department of Justice attorneys in these sessions to furnish the mediator with the name and title of the government official authorized to effectuate settlement

under 28 C.F.R., Part O, Subpart Y, whom the mediator and attorney can contact by phone during the mediation session; except that in cases in which settlement authority for the United States government rests with officials of the rank of Assistant Attorney General (or its equivalent), or with the members of an independent agency, this provision shall not apply unless the mediator for good reason so provides in writing after reviewing the mediation papers.

The mediator shall not disclose the substance of the mediation session(s), nor report on the same, to any person or persons. The attorneys are likewise prohibited from disclosing any substantive information emanating from the session(s) to anyone other than their clients or co-counsel; and then, only upon receiving due assurances that the recipients will honor the confidentiality of the information. No information emanating from the mediation session(s) shall be construed as an admission against interest. The parties shall not file any motion or other document that would disclose any information about the content of a mediation, whether or not it has been concluded. This means that the parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion other than a motion affecting the briefing or argument schedule.

No parties shall be bound by anything said or done at a mediation session unless a settlement is reached. If a tentative

settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement, and counsel shall file a stipulation of dismissal of the appeal. Such stipulation must be filed within 30 days after the settlement is reached unless a short extension is requested by the attorneys by motion. If a case cannot be resolved through mediation, it will remain on the docket and proceed as if mediation had not been initiated.

All civil appeals and petitions for review of administrative orders, except original proceedings (such as writs for mandamus), prisoner petitions, habeas corpus petitions, or any pro se cases, shall be eligible for referral to the Appellate Mediation Program.

All cases in the Appellate Mediation Program shall remain subject to normal scheduling for briefing and oral argument by the Clerk's office. If it is the mediator's view that additional mediation sessions are required and that such sessions would affect the briefing schedule in the case, the mediator will advise the Clerk who may defer or postpone the briefing and/or oral argument date.

Arthur H. Kahn, Esquire, will serve initially as the Special Master and Acting Director of the Appellate Mediation Program until further order of the Court.

Failure of counsel to comply with the requirements of this order may result in the imposition of sanctions.

A copy of this order will be posted in the Offices of the Clerks of all United States District Courts within the Third Circuit and in the Office of the Clerk of the United States Court of Appeals for the Third Circuit. A copy of this Order also will be provided to all counsel in cases which fall within the scope of the program.

Per Curiam

/s/ Dolores K. Sloviter

Chief Judge

EFFECTIVE DATE: August 1, 1994

DATED: June 8, 1994

A true copy:

/s/ P. Douglas Sisk

Clerk

