

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

**APPELLATE MEDIATION PROGRAM**

**INSTRUCTIONS TO COUNSEL REGARDING CONFIDENTIAL POSITION PAPERS**

The Notice of Assignment For Mediation instructs counsel to forward confidential position papers to the Mediator within 15 days from the date of the Notice. This requirement is pursuant to the Third Circuit Local Appellate Rule 33.0, amended January 1, 2000. The relevant language of the Rule states as follows:

"Within fifteen days of the case's selection for mediation by the Chief Circuit Mediator, each counsel must prepare and submit to the mediator a confidential 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 on motions filed in the Court of Appeals and their status . . . ."

In preparing your position paper, it is most important to keep in mind that the paper is being sent **TO THE MEDIATOR ONLY**. Your position paper will be kept confidential unless you consent to having it shown to opposing counsel.

You are also **REQUIRED** to identify in your position paper the person or persons who will participate in the mediation with authority to enter into a binding settlement on behalf of your client.

You should assume that the Mediator is familiar with the legal issues in the case and has read the opinion of the court or agency below. Therefore, you should devote most of your position statement to explaining your client's views on settlement. Can the dispute be settled for money? If so, what is your client's range? What other issues, if any, will have to be resolved in order to settle the case? What prior settlement discussions have been held, and what has been their outcome? What are the expected costs and fees to be expended in connection with the appeal? Is there any insurance coverage which relates to any of the claims in the case? Answers to these questions will be more valuable to the Mediator than a brief on the merits.

Of course, you may comment on the merits of your case, but even here, the focus should be on how the merits may impact settlement. For example, does the case raise legal issues for your client that will impact beyond the present dispute? Which of your opponent's arguments do you regard as the most difficult to rebut?

There is no formal form for position papers. You may prepare a letter or memorandum. The Court of Appeals caption and number should be on your paper.

Joseph A. Torregrossa  
Chief Circuit Mediator