

## Mediation

The Third Circuit's Appellate Mediation Program conducts confidential mediation conferences pursuant to Rule 33 of the Federal Rules of Appellate Procedure and Third Circuit Local Rule LAR 33. The main purpose of the Mediation Program is to help parties amicably resolve the dispute which is the subject of the appeal before the court.

Most civil appeals are eligible for mediation. Each year, the program conducts mediations in hundreds of cases and helps the parties amicably resolve many cases. The mediations are conducted by the Chief Circuit Mediator, Circuit Mediator, and by senior circuit and district court judges. If your appeal is not scheduled for mediation and you would like to have a mediation conference conducted, you may make a confidential request for a conference by contacting the Chief Circuit Mediator.

To learn more about the Third Circuit's Mediation Program, please review this site further.

You may also review an article on Third Circuit Appellate Mediation published in Volume 47 of the Villanova Law Review at p.1055 (2002).

If you have any questions or would like to request a Mediation conference, call the Mediation Program office at (267) 299-4130. You may also email us at:

- [Joe\\_Torregrossa@ca3.uscourts.gov](mailto:Joe_Torregrossa@ca3.uscourts.gov)
- [Penny\\_Ellison@ca3.uscourts.gov](mailto:Penny_Ellison@ca3.uscourts.gov)
- [Tricia\\_Harris@ca3.uscourts.gov](mailto:Tricia_Harris@ca3.uscourts.gov)
- [Sharon\\_Yee@ca3.uscourts.gov](mailto:Sharon_Yee@ca3.uscourts.gov)

Send us a fax at 267-299-5115 or write to us at Appellate Mediation Program, Room 20716, United States Courthouse, 601 Market Street, Philadelphia, Pa 19106.

Directions to the courthouse

**NOTICE: On January 9, 2001 the Court adopted an amendment to Local Appellate Rule 33, adding Rule 33.6 on the appointment of pro bono counsel to represent pro se litigants in the mediation of pro se cases. If any lawyer would like to volunteer for this program, please contact Mr. Joseph Torregrossa at the Mediation Office.**

This site is hosted by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary. Some of the links on this site contain information created and maintained by other public and private organizations. These links are provided for the user's convenience. The Third Circuit does not control or guarantee the accuracy, timeliness or completeness of this outside information; nor does it control or guarantee the on-going availability, maintenance, or security of these Internet sites. Further, the inclusion of links is not intended to reflect their importance or to endorse any views expressed, or products or services offered, on these outside sites, or the organizations sponsoring the sites.

## About the Staff

Philadelphia, Pennsylvania Office

Joseph A. Torregrossa, Chief Circuit Mediator

Penny Conly Ellison, Circuit Mediator

Tricia Harris, Program Administrator

Sharon Yee, Mediation Legal Staff

### Mailing Address:

Appellate Mediation Program

Room 20716

United States Courthouse

601 Market Street

Philadelphia, PA 19106

### Telephone:

(267) 299-4130 (Joe Torregrossa)

(267) 299-4138 (Penny Conly Ellison)

### Fax Number:

(267) 299-5115

### Email:

Joe\_Torregrossa@ca3.uscourts.gov

Sharon\_Yee@ca3.uscourts.gov

Penny\_Ellison@ca3.uscourts.gov

Tricia\_Harris@ca3.uscourts.gov

### Chief Circuit Mediator

Joe Torregrossa is Chief Circuit Mediator of the Appellate Mediation Program for the United States Court of Appeals for the Third Circuit. Before taking his current position in 1997, Mr. Torregrossa practiced commercial litigation, arbitration and mediation for over 26 years with the law firm of Morgan, Lewis & Bockius LLP in Philadelphia, Pennsylvania. He also served as a law clerk in the United States District Court for the Eastern District of Pennsylvania. During his legal career, Mr. Torregrossa has been an active supporter of alternative dispute resolution procedures. He is a frequent lecturer and speaker at CLE programs and law schools on alternative dispute resolution.

Joe Torregrossa received an A. B. degree in 1966 from Villanova University and a J. D. Degree in 1969 from Villanova University School of Law.

#### Circuit Mediator

Penny Conly Ellison joined the Program in May 2005. Ms. Ellison practiced commercial and general litigation at the Dilworth Paxson firm in Philadelphia for 16 years. She also participated extensively in firm governance and management, serving as chairwoman of the firm's hiring and marketing committees and co-chairwoman of its strategic planning committee. Penny Ellison received a B. S. Degree in Mathematics in 1984 from Pennsylvania State University and a J. D. Degree, cum laude in 1989 from University of Pennsylvania Law School.

#### Mediation Legal Staff

Sharon Yee joined the program in 2000 as Mediation Legal Staff. Ms. Yee received an A.B. degree from Smith College in 1992 and a J.D. degree from Villanova University School of Law in 2000.

#### Program Administrator

Tricia Harris joined the Program in 2014 after working as a Case Manager for the Clerk's Office at the U.S. Court of Appeals for the Third Circuit. Ms. Harris is the Program Administrator for the Appellate Mediation Program. Ms. Harris received a BBA degree from Temple University.

[Home](#) | [Contact Us](#) | [Vacancy Announcements](#) | [Glossary of Legal Terms](#) | [FAQs](#) | [Privacy Policy](#) | [BrowseAloud](#)

This site is hosted by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary. Some of the links on this site contain information created and maintained by other public and private organizations. These links are provided for the user's convenience. The Third Circuit does not control or guarantee the accuracy, timeliness or completeness of this outside information; nor does it control or guarantee the on-going availability, maintenance, or security of these Internet sites. Further, the inclusion of links is not intended to reflect their importance or to endorse any views expressed, or products or services offered, on these outside sites, or the organizations sponsoring the sites.

## Mediation - Frequently Asked Questions

### Eligibility for Mediation and Selection of Cases for Mediation

**What cases are eligible for mediation?**

**Are all civil cases mediated?**

**Who will decide whether a case is selected for mediation? How are cases selected?**

**May I request mediation? Can the request be made without the opposing side knowing of the request?**

**How will I know if my case is selected for mediation?**

**May I request mediation even after a case is not selected for mediation?**

**If a case is selected for mediation, is mediation mandatory? May I "opt-out" of mediation?**

**May the court refer a case to mediation?**

### The Mediator

**Who will be the mediator, and how is the mediator selected?**

**How can I find out biographical information about the mediator?**

### Impact of the Mediation Process on the Appellate Process

**Is the appellate process stayed when a case is selected for mediation?**

**When can I expect a briefing schedule?**

### The Mediation Process

**How will the mediation session be conducted? What takes place at the mediation?**

**Will the mediation be conducted in person or by telephone?**

**Who must be present at the mediation session?**

**Will the mediation session be confidential?**

**What must I file before the mediation session?**

**Is the mediation limited to the appeal itself? What if there are other disputes between the parties which are not involved in the appeal?**

**If a settlement is reached, will the terms of the settlement be confidential?**

## Post-Mediation Process

**What happens procedurally if a case settles as a result of the mediation?**

**What happens procedurally if a case does not settle after mediation?**

[Home](#) | [Contact Us](#) | [Vacancy Announcements](#) | [Glossary of Legal Terms](#) | [FAQs](#) | [Privacy Policy](#) | [BrowseAloud](#)

This site is hosted by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary. Some of the links on this site contain information created and maintained by other public and private organizations. These links are provided for the user's convenience. The Third Circuit does not control or guarantee the accuracy, timeliness or completeness of this outside information; nor does it control or guarantee the on-going availability, maintenance, or security of these Internet sites. Further, the inclusion of links is not intended to reflect their importance or to endorse any views expressed, or products or services offered, on these outside sites, or the organizations sponsoring the sites.

## Mediation Forms

- ☒ Concise Summary of the Case - This form must be submitted in all cases which are subject to the Court's Appellate Mediation Program
- ☒ Mediation Instructions
- ☒ Stipulation of Dismissal

[Home](#) | [Contact Us](#) | [Vacancy Announcements](#) | [Glossary of Legal Terms](#) | [FAQs](#) | [Privacy Policy](#) | [BrowseAloud](#)

This site is hosted by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary. Some of the links on this site contain information created and maintained by other public and private organizations. These links are provided for the user's convenience. The Third Circuit does not control or guarantee the accuracy, timeliness or completeness of this outside information; nor does it control or guarantee the on-going availability, maintenance, or security of these Internet sites. Further, the inclusion of links is not intended to reflect their importance or to endorse any views expressed, or products or services offered, on these outside sites, or the organizations sponsoring the sites.

# UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

---

## CONCISE SUMMARY OF THE CASE

Pursuant to 3<sup>rd</sup> Cir. LAR 33.3, counsel are required to file a concise summary of the case within 14 days of the date of docketing of the Notice of Appeal. Total statement is limited to no more than 2 pages, single-spaced. Counsel may utilize this form or attach a 2 page statement encompassing the information required by this form.

SHORT

CAPTION: \_\_\_\_\_

USCA NO.: \_\_\_\_\_

LOWER COURT or AGENCY and DOCKET NUMBER:

\_\_\_\_\_

NAME OF

JUDGE: \_\_\_\_\_

Specify who is suing whom, for what, and the subject of this action. Identify (1) the nature of the action; (2) the parties to this appeal; (3) the amount in controversy or other relief involved; and (4) the judgment or other action in the lower court or agency from which this action is taken:

LIST and ATTACH a copy of each order, judgment, decision or opinion which is involved in this appeal. If the order(s) or opinion(s) being appealed adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge, the report and recommendation or decision shall also be attached.



Provide a short statement of the factual and procedural background, which you consider important to this appeal:

Identify the issues to be raised on appeal:

This is to certify that this Concise Summary of the Case was electronically filed with the Clerk of the U.S. Court of Appeals for the Third Circuit and a copy hereof served to each party or their counsel of record

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

Signature of Counsel

Rev. 07/2015

**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

_____	:	
Appellant	:	
v.	:	No. xx-xxxx
_____	:	
Appellee	:	

Pursuant to the settlement reached through the Court=s Appellate Mediation Program, it is hereby stipulated and agreed by and between the parties that the above-captioned matter is **DISMISSED** pursuant to F.R.A.P. 42(b) with prejudice and without costs against any party.

Counsel For Appellee

Dated:

## Mediation Rules

### L.A.R. 33.0 APPELLATE MEDIATION PROGRAM

#### 33.1 Appellate Mediation Program

Appeals in civil cases and petitions for review or for enforcement of administrative action are referred to the Appellate Mediation Program to facilitate settlement or otherwise to assist in the expeditious handling of the appeal or petition. A special master will serve as the Chief Circuit Mediator and, in cooperation with the clerk, will manage the Appellate Mediation Program. Mediations will be conducted by a senior judge of the court of appeals, a senior judge of a district court, the Chief Circuit Mediator, or other person designated pursuant to Rule 48, FRAP Parties may confidentially request mediation by telephone or by letter directed to the Chief Circuit Mediator. In all cases, however, the special master will determine which cases are appropriate for mediation and will assign the matter to a mediator.

#### 33.2 Eligibility for Appellate Mediation Program

All civil appeals and petitions for review or for enforcement of agency action are eligible for referral to the Appellate Mediation Program except: (1) original proceedings (such as petitions for writ of mandamus); (2) appeals or petitions in social security, immigration or deportation, or black lung cases; (3) prisoner petitions; (4) habeas corpus petitions or motions filed pursuant to 28 U.S.C. Sec. 2255; (5) petitions for leave to file second or successive habeas petitions; and (6) pro se cases. In all cases eligible for appellate mediation, the appellant or petitioner must file with the clerk, within 10 days of the docketing of the appeal with service on all parties, a Civil Appeals Information Statement and a Concise Summary of the Case, which is available on the court's website. Appellant must attach to the Concise Summary of the Case copies of the order(s) being appealed and any accompanying opinion or memorandum of the district court or agency. In the event the order(s) being appealed or any accompanying opinion or memorandum adopt, affirm, or otherwise refer to the report and recommendation of a magistrate judge or the decision of a bankruptcy judge, the report and recommendation or decision must also be attached. In addition, any judge or panel of the court may refer to the Chief Circuit Mediator any appeal, petition, motion or other procedural matter for review and possible amicable resolution.

#### 33.3 Initial Screening and Deferral of Briefing for Cases Selected for Mediation

The Clerk will provide the Chief Circuit Mediator with a copy of the judgment or order on appeal, any opinion or memorandum issued by the district court or agency, appellant's Civil Appeal

Information Statement and Concise Summary of the Case and any relevant motions. Following review of these materials, the Chief Circuit Mediator may refer an appeal or petition to a senior judge, himself or herself, or such other person designated pursuant to Rule 48, FRAP for mediation. The Chief Circuit Mediator will advise the parties, the chosen mediator, and the clerk of the referral.

If a case is referred to mediation, a briefing schedule will be deferred during the pendency of mediation unless the court or Chief Circuit Mediator determines otherwise. A referral to mediation will not, however, defer or extend the time for ordering any necessary transcripts.

If a case is not accepted for mediation, or if accepted but is not resolved through mediation, it will proceed in the appellate process as if mediation had not been considered or initiated.

### 33.4 Referral of Matters to Mediation by a Judge or Panel of the Court

At any time during the pendency of an appeal or petition, any judge or panel of the court may refer the appeal or petition to a senior judge of the court of appeals, a senior judge of a district court, the Chief Circuit Mediator, or other person designated pursuant to Rule 48, F.R.A.P. for mediation or any other purpose consistent with this rule. In addition, any judge or panel of the court may refer any appeal, petition, motion or other procedural matters for review and possible amicable resolution. The procedures set forth in L.A.R. 33.5 are applicable to matters referred for mediation pursuant to L.A.R. 33.4 unless otherwise directed by the Chief Circuit Mediator. Documents, including but not limited to, those specified in L.A.R. 33.5(a) may be required.

### 33.5 Proceedings After Selection for the Program

(a) Submission of Position Papers and Documents. Within 15 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 10 pages, stating counsel's views on the key facts and legal issues in the case, as well as on key factors relating to settlement. 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 should not be served upon opposing counsel.

Documents prepared for mediation sessions are not to be filed with the Clerk's Office and are not to be of record in the case.

(b) Mediation Sessions. The mediator will notify the parties of the time, date, and place of the mediation session and whether it will be conducted in person or telephonically. Unless the mediator directs otherwise, mediation sessions must be attended by the senior lawyer for each party responsible for the appeal and by the person or persons with actual authority to negotiate a settlement

of the case. If settlement is not reached at the initial mediation session, but the mediator believes further mediation sessions or discussions would be productive, the mediator may conduct additional mediation sessions in person or telephonically.

(c) Confidentiality of Mediation Proceedings. The mediator will not disclose to anyone statements made or information developed during the mediation process. The attorneys and other persons attending the mediation are likewise prohibited from disclosing statements made or information developed during the mediation process to anyone other than clients, principals or cocounsel,

and then, only upon receiving due assurances that the recipients will honor the confidentiality of the information. Similarly, the parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion or argument to any court.

The

mediation proceedings are considered compromise negotiations under Rule 408 of the Federal Rules

of Evidence. Notwithstanding the foregoing, the bare fact that a settlement has been reached as a result of mediation will not be considered confidential.

(d) Settlement. No party will be bound by statements or actions at a mediation session unless a settlement is reached. If a settlement is reached, the agreement must be reduced to writing and will be binding upon all parties to the agreement, and counsel must file a stipulation of dismissal of the appeal pursuant to Rule 42(b), FRAP. Such a stipulation must be filed within 30 days after settlement is reached unless an extension thereof is granted by the Chief Circuit Mediator.

### 33.6 Mediation in Pro Se Cases

In appropriate cases, the Chief Circuit Mediator may request counsel to represent pro se litigants for purposes of mediation only. Counsel must agree to take the case on a pro bono basis, except that if an applicable statute authorizes the award of attorneys' fees, counsel may enter into a written agreement with the client assigning to the attorney any amounts designated as attorneys' fees. The case will be treated as any other case subject to mediation and all provisions of L.A.R. 33 will apply. If mediation is unsuccessful, counsel may discontinue his or her representation; however, counsel may continue to represent the litigant through the rest of the appeal if counsel wishes and the party agrees. The Chief Circuit Mediator may adopt and implement specific procedures in furtherance of this rule.

Source: New rule in 2000.

Cross-references: None

Committee Comments: The rule was amended in 2011 to reflect a change in the title of the circuit mediator and to accommodate electronic filing.

[Home](#) | [Contact Us](#) | [Vacancy Announcements](#) | [Glossary of Legal Terms](#) | [FAQs](#) | [Privacy Policy](#) | [BrowseAloud](#)

This site is hosted by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary. Some of the links on this site contain information created and maintained by other public and private organizations. These links are provided for the user's convenience. The Third Circuit does not control or guarantee the accuracy, timeliness or completeness of this outside information; nor does it control or guarantee the on-going availability, maintenance, or security of these Internet sites. Further, the inclusion of links is not intended to reflect their importance or to endorse any views expressed, or products or services offered, on these outside sites, or the organizations sponsoring the sites.