

## **Fed. R. App. P. Rule 33. Appeal Conferences**

The court may direct the attorneys – and, when appropriate, the parties – to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

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### **10<sup>th</sup> Cir. R. 33**

#### **33.1 Mediation conference.**

- (A) Circuit mediation office; purpose of mediation conference.** The circuit mediation office may schedule and conduct mediation conferences in any matter pending before the court. The primary purpose of a conference is to explore settlement, but case management matters may also be addressed.
- (B) Participation of counsel and parties.** Counsel must participate in every scheduled mediation conference and in related discussions. Generally a party may participate but need not unless required by the circuit mediation office. Conferences are conducted by telephone unless the circuit mediation office directs otherwise.
- (C) Preparation of counsel for mediation conference; settlement authority.** Counsel must consult with their clients and obtain as much authority as feasible to settle the case and agree on case management matters in preparing for the initial conference. These obligations continue throughout the mediation process.
- (D) Confidentiality.** Statements made during the conference and in related discussions, and any records of those statements, are confidential and must not be disclosed by anyone (including the circuit mediation office, counsel, or the parties; and their agents

or employees), to anyone not participating in the mediation process. Proceedings under this rule may not be recorded by counsel or the parties.

- (E) **Conference order; mediator authority.** The circuit mediation office may cause a judgment or order to be entered controlling the course of the case or the mediation proceedings. The circuit mediation office and its mediators are delegates of this court. Any conference orders or other communications from the circuit mediation office must be treated the same as any other court directive.
- (F) **Extensions for ordering transcript or filing brief.** The time allowed by Fed. R. App. P. 10(b)(1) for ordering a transcript and by Rule 31.1 for filing briefs is not automatically tolled pending a conference. If a conference has been scheduled, counsel may contact the circuit mediation office for an extension of time to order a transcript or to file a brief.
- (G) **Request for mediation conference by counsel.** Counsel may request a mediation conference by contacting the circuit mediation office. The office will determine whether a conference will be held.
- (H) **Sanctions.** The court may impose sanctions if counsel or a party violates this rule or an order entered under it.

### 33.2 **Counsel conference.**

- (A) **Counsel conference required.** Unless a mediation conference under Rule 33.1 has been conducted, counsel must discuss settlement in all civil matters except those involving pro se litigants, relief from criminal convictions, and social security appeals.
- (B) **Counsel for appellant to initiate.** In cases to which Rule 33.2(A) applies, counsel for the appellant or petitioner must initiate a conference with opposing counsel to fully explore settlement no later than 30 days after the filing of the last brief. The conference may be conducted by telephone.

- (C) Report of counsel conference.** No later than 10 days after the initiation of the conference, counsel for appellant or petitioner must mail a report to the circuit mediation office on a form provided by the clerk. Service of this report upon opposing counsel is not required.
- (D) Confidentiality.** Statements made during a conference, the Rule 33.2(C) report, and related discussions are covered by the confidentiality provision of Rule 33.1(D).