

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GENERAL ORDER GOVERNING THE APPELLATE CONFERENCE PROGRAM
EFFECTIVE MARCH 27, 2000

U.S. COURT OF APPEALS
FILED
MAR 27 2000
CHARLES R. FULBRUGE III
CLERK

O R D E R:

1. Pursuant to Federal Rules of Appellate Procedure Rule 33, it is hereby ORDERED that, in matters selected for participation in the court's appellate conference program, or referred to the program by the court, conference proceedings shall be conducted in accordance with the provisions of this General Order.

2. Counsel will be notified by letter of the date and time scheduled for the initial conference. Conferences may be conducted by telephone or in person at the option of the conference attorney or upon request of all parties. Conferences will be scheduled and adjourned at the conference attorney's discretion, with due regard for the availability and convenience of counsel.

3. The principal purpose of the conference program is to explore the possibility of settlement and to facilitate settlement discussions. Conferences may also entail consideration of simplification, clarification, and reduction of issues, and any other matters relating to the efficient management and disposition of the appeal.

4. Counsel's participation is required at any scheduled conference. The conference attorney may also require attendance by the parties in person or through appropriate corporate representatives or representatives of insurers providing a defense. After a case has been assigned to the conference program, any party may submit to the conference attorney a written request not to participate in or to terminate settlement discussions. In cases selected for the conference program by the conference attorney, such a request will be honored, and any further conference proceedings will be restricted to the other purposes of the conference program. In cases referred to the conference program by the court, the request will be submitted to the court, and conference proceedings will be held in abeyance pending further directions from the court.

5. The conference attorney may require counsel to provide pertinent written information or materials, including position statements, lists of issues, outlines of arguments or other documents that the conference attorney believes may be helpful in accomplishing the purposes of conferences under Rule 33.

6. During the pendency of conference proceedings, counsel

should provide the conference attorney with copies of all filings and correspondence sent to the clerk. Counsel should not send the clerk copies of materials or documents requested by the conference attorney or otherwise prepared specifically for the program. Documents created for the program and furnished to the conference attorney will not be included in the court's file.

7. The time allowed for filing of briefs will not be tolled automatically by proceedings pursuant to this order. If the parties are engaged in settlement discussions, the conference attorney may recommend a resetting of the briefing schedule. The conference attorney may also recommend the entry of other orders controlling the course of proceedings, including orders altering the page and type-volume limitations for briefs and record excerpts.

8. All statements made by the parties or their counsel in the course of proceedings pursuant to this order, and all documents specifically prepared for use in such proceedings, shall be without prejudice, and, apart from any settlement agreement reached, shall not be binding on the parties. Such statements and documents shall not be quoted, cited, referred to or otherwise used by the parties or their counsel in the course of the appeal or in any other proceeding, except as they may be admissible in a proceeding to enforce a settlement agreement. Such statements and documents shall be privileged from discovery by the parties except in such a proceeding.

9. Confidentiality is required with respect to all settlement discussions conducted under conference program auspices. Information concerning such discussions shall neither be made known to the court nor voluntarily disclosed to anyone not involved in conference proceedings (or entitled to be kept informed of such proceedings), by either the conference attorney, the parties or their counsel, except insofar as such information may be admissible in a proceeding to enforce a settlement agreement and except as provided below.

10. Information about the assignment of particular cases to the program shall not be made public either by the staff of the conference program or by the clerk. For good cause (and in the absence of an explicit agreement to the contrary) the fact that a case has been assigned to the conference program may be disclosed by any party as long as substantive information about settlement discussions is not revealed, and the disclosure is not purposely used in an effort to gain an advantage over another party. Any such improper disclosure will result in the release of the case from the program. The identity of cases assigned to the program may in any event be provided to the court in statistical reports, in response to inquiries and in connection with recommendations about procedural orders.

11. Once all briefs have been filed, or when a motion is under submission to the court, the conference attorney may report to the court whether active settlement discussions are under way in order to assist the court in scheduling. Such reports may include information about the likelihood and timing of settlement, but information about the parties respective positions or other substantive aspects of settlement discussions will not be revealed to the court except upon the joint request of all parties.

12. The confidentiality provisions of this order shall extend to discussions occurring in the course of preliminary contacts between the conference attorney and counsel about the possibility of settlement, whether or not the case is eventually assigned to the program. These provisions shall also be binding on non-parties (such as insurers or parties to related disputes) who accept invitations to participate in conference proceedings. For the purposes of this order these participants shall be treated as parties, and participation in settlement discussions under the auspices of the conference program shall be deemed to constitute an agreement to be bound by the confidentiality provisions of this order.

13. Counsel for each party shall be responsible for providing a copy of this order to all persons participating in conference proceedings on behalf of that party. In addition, before disclosing any information about settlement discussions conducted under conference program auspices to any other person whose position or relationship with a party requires such disclosure, counsel shall provide such person with a copy of this order and obtain such person's agreement to be bound as a party would be bound by its provisions requiring confidentiality.

14. If a party is subject to obligations of disclosure to the public or to persons from whom such agreement cannot be obtained, counsel shall inform the conference attorney and counsel for the other party or parties. Settlement discussions may then be conducted under program auspices only if all parties agree to proceed. This order is not intended of its own force to prevent disclosure required by applicable law, but parties subject to such requirements must make every effort to maintain, to the extent permitted by such provisions of law, the confidentiality of such settlement discussions.

15. The confidentiality of any settlement agreement will be governed by the terms of that agreement and the law otherwise applicable thereto.

16. This General Order supersedes the prior General Order issued November 16, 1996, which shall nevertheless continue to be effective for cases assigned to the conference program before the date hereof.

Carolyn Dineen King
Chief Judge

March 27, 2000