

KINNARD MEDIATION CENTER
UNITED STATES COURT OF APPEALS
ELEVENTH JUDICIAL CIRCUIT

CONFIDENTIAL MEDIATION STATEMENT

11th Cir. R. 33-1(d) requires that counsel in appeals selected for mediation send the circuit mediator a Confidential Mediation Statement assessing the prospects of the appeal. Counsel should fax, mail, or email the statement so that the circuit mediator receives it at least one week before the mediation date. It should be in letter format and preferably not more than five pages. The circuit mediator does not share the statement with the other side, and it does not become part of the court file. In the statement counsel should

1. Recite the circumstances that gave rise to the litigation, including facts underlying any procedural issues in the appeal.
2. Describe any matters pending in the lower court or in any related litigation.
3. Describe any recent developments that may affect the resolution of the appeal.
4. Describe the important factors (factual, legal, practical) counsel believes affect the terms and conditions upon which the appeal may reasonably be settled.
5. Describe any efforts to settle the issues, including offers or demands before and since the judgment or order appealed from.
6. Provide a candid assessment of the strengths and weaknesses of the major points of error of the appeal.
7. Describe the necessary terms in any settlement (i.e., confidentiality, date by which settlement must close, scope of release, disposition of related litigation, etc.).
8. Describe any additional information counsel's client or the other party needs to settle the appeal and whether it is needed before the mediation.
9. State whether counsel and counsel's parties will participate in the mediation in good faith with the intention of using their best efforts to settle the appeal, and explain if "no" as to any party.
10. State whether counsel and counsel's parties will maintain confidentiality with respect to settlement communications made and received during and subsequent to the mediation, and explain if "no" as to any party.
11. If the appeal were remanded, describe the realistic range of outcomes upon further trial or disposition by the lower court, including monetary remedies, attorney's fees, court costs, further appellate costs, and similar awards the lower court might have opportunity to consider awarding.
12. Provide the name, title, address, telephone number, and email address of each person who will be participating in the mediation with counsel and designate which persons will have settlement or negotiating authority. (As required in the Notice of Mediation, also provide this participant information to opposing counsel in a communication separate from this Confidential Mediation Statement, with a copy to the circuit mediator.)

Do not send your Confidential Mediation Statement to opposing counsel or any party or the Circuit Clerk's Office.