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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

UNITED STATES OF AMERICA,
DEPARTMENT OF THE AIR FORCE, COURT OF APPEALS OF NEW MEXICO

FILED

FILED

Plaintiff(s)-Appellant(s),

NOV 5 1990

Patricia C. Maryanues

No. 12,550

vs.

STATE OF NEW MEXICO, HEALTH
AND ENVIRONMENT DEPARTMENT,
ENVIRONMENT IMPROVEMENT DIVISION,

Defendant(s)-Appellee(s).

_____ /

ORDER

The above entitled case is ordered assigned for settlement conference pursuant to Order Adopting Procedure For Settlement Conference Program, Misc. No. 1-16, a copy of which is attached. The name, address, and phone number of the facilitator assigned to this case is:

Charlotte H. Hetherington
P.O. Box 5738
Santa Fe, NM 87502 988-4476

In accordance with paragraph 12 of the description of the program, requirements of the appellate process are tolled. The facilitator will be responsible for scheduling the conference. It is expected that the settlement conference will be attended not only by lead counsel on the case but also by each party or party's representative having actual and realistic authority to settle the issues.

Patricia C. Maryanues
CLERK

cc: Charlotte H. Hetherington
John W. Lavitz
Lt. Col. Benton
Tracy Hughes



FILED
IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

'90 SEP 27 A9:17

ORDER ADOPTING PROCEDURE FOR SETTLEMENT CONFERENCE PROGRAM Misc. No. 1-16
STATE OF NEW MEXICO
H.C. MANZANARES, CLERK

ORDER

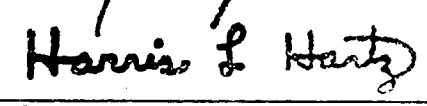
The Court of Appeals, having experienced an increasing backlog of appeals over a period of eleven years which has resulted in delays in many cases and the inability to consider others, adopts, as an emergency measure, pursuant to SCRA 1986, 12-313, a mandatory settlement conference program in accordance with the attached procedures and time chart; the court will solicit assistance from retired judges and attorneys to act as settlement facilitators for a settlement week for Court of Appeals cases, to be held the week of November 26, 1990.

IT IS SO ORDERED.



WILLIAM W. BIVINS, Chief Judge

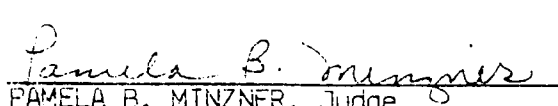

RUDY S. APODACA, Judge


THOMAS A. DONNELLY, Judge


HARRIS L. HARTZ, Judge


A. JOSEPH ALARID, Judge


BENJAMIN ANTHONY CHAVEZ, Judge


PAMELA B. MINZNER, Judge

**COURT OF APPEALS
SETTLEMENT CONFERENCE PROGRAM**

1. PARAMETERS

Cases included: Civil cases which are ready but have not been submitted.

Workers' compensation cases which are ready but which have not been submitted.

Ten to fifteen civil or worker's compensation cases which have been recently assigned to the general calendar. The pre-hearing division can screen these cases during the calendaring process to pick appeals which have high settlement potential.

Cases excluded: Criminal.

Juvenile.

Interlocutory Appeals.

2. SETTLEMENT FACILITATORS

The Court will solicit assistance from retired judges to act as settlement facilitators. The committee¹ will supply the court with a list of retired judges.

The Court will solicit participation of attorneys as settlement facilitators. A list of attorneys will be provided to the Court by the committee.

Facilitators will be selected from as many parts of the state as possible in order to assign cases to a facilitator from the same locale as the attorneys involved in cases. Each facilitator will be assigned two cases.

1

The Committee consists of The Honorable William W. Bivins, The Honorable Thomas A. Donnelly, Steven L. Tucker, and Sarah M. Singleton.

3. TIMING

A detailed time chart is attached hereto. Briefly, settlement week is planned for the week of November 26. Cases will be assigned to settlement week around the beginning of November.

All conferences are to be held during settlement week unless scheduling makes it impossible to hold the conference until the following week. In addition, if follow up conferences are needed, they may be held in the week following settlement week.

4. MANDATORY CONFERENCE

Good faith participation in the settlement conference by the attorneys will be necessary. It is strongly recommended that a party or a party's representative with settlement authority also be present. If it is not practical for a party's representative to be present, then a person with settlement authority should be available by telephone.

5. COURT OF APPEALS INVOLVEMENT

The Chief Staff Attorney of the Court of Appeals Prehearing Division shall serve as a liaison between the facilitators and the Court of Appeals. The judges on the Court of Appeals shall not be involved in the attempt to settle any individual case and shall not be informed either by the staff or by the facilitators about the settlement conferences in any case.

6. ASSIGNMENT OF CASES

Approximately one month before settlement week, the attorneys for each party in the cases being assigned to a settlement conference will be notified that their case has been set for a settlement conference and will be notified of the facilitator assigned to the case. The parties will be required to set up a conference call with the facilitator to arrange a time for the settlement conference. Because some of the cases will have been briefed sometime before the settlement conference, counsel will be invited to submit to the facilitator new authority which has arisen since the briefing of the case and any other matter that counsel believes will be helpful to the facilitator. Such information should also be submitted to opposing counsel prior to the settlement conference.

7. TRAINING

Shortly after cases are assigned to a facilitator, a mandatory training session shall be held in either Santa Fe or Albuquerque. The training sessions shall be videotaped for later replay by those unable to attend the live session. Training shall consist of tips from a Court of Appeals judge or staff attorney about reviewing the record and the appellate standard of review, and the facilitators will be provided with a list of cases concerning appellate review. In addition, the Court representative involved in the training will acquaint the facilitators with the current status of cases in the Court of Appeals so that the facilitators can apprise the parties of the possible timing of a decision in their case. The training shall also make use of videotapes prepared by the Second Judicial District which are instructive on how to handle a settlement conference.

8. FACILITATOR'S CHECK LIST

Each facilitator shall be given a check list with basic issues which should be looked for in each case. These include whether the order being appealed from is final, whether there is jurisdiction, and whether the issues were preserved.

9. ACCESS TO COURT RECORDS

At the time of assignment, the facilitators will be sent copies of the briefs and calendaring notices from the number 1 court file. The facilitators will also be sent a copy of the index to the district court record and, where applicable, a copy of the tape monitor's log. The facilitator may contact the Court of Appeals Clerk to borrow the record proper unless it is easier for the Clerk to copy necessary papers. Copies of the transcripts or tapes may be borrowed from either the Court of Appeals or the District Court, as permitted by local rule. In addition, the District Court Clerk's file may be reviewed in its entirety at the District Court. Depositions and exhibits may be reviewed at the Court of Appeals or may be borrowed if not voluminous. Attorneys for either party may make copies of exhibits or depositions available to the facilitator if so requested. If any difficulties are encountered concerning access to court records, the facilitators may contact the Court of Appeals Clerk's office or the liaison.

10. MEANINGFUL CONFERENCE

A minimum of 90 minutes shall be allocated for the settlement conference. While each facilitator must develop

his or her own style, the general format shall be as follows: The facilitator should explain that each side will be allowed to present its position and, while the facilitator may ask questions, the attorneys should not interrupt each other. The appellant should be asked to identify the underlying factors which led to the dispute, what brought it to court, what the court or jury did wrong, what the issues on appeal are, and what the support for the issues are. It may be appropriate to actually read and review the cited authority with the appellant to determine whether or not the case is controlling or distinguishable from the conferenced matter.

The appellee should then be asked to address the same matters and to point out the weaknesses in the appellant's case. Generally, the appellee will not have to restate the factual situation and will concentrate on a response to the issues and will provide authority in support of the judgment.

The facilitator may then wish to review the issues with both parties together. It is generally a good technique at this point for the facilitator to meet privately with each side to candidly discuss the weaknesses in their cases. The facilitator should keep confidential any matter which is identified as being confidential. However, as to non-confidential matters, it is sometimes fruitful to disclose those matters to the other side in an attempt to facilitate the settlement.

After private conferences, it may be worthwhile to have a joint session to summarize the progress so far and to try to bring the parties to agreement. While some cases may settle during the conference, it is more likely that counsel will want to discuss it in detail with their clients. If no settlement is reached, then the facilitator should proceed with the follow up step.

11. REPORT BACK DATE

Counsel should be asked to report back to the facilitator with the results of the discussions with their clients and with each other. A conference call might be used to get the report back. There may be more than one conference call needed to get a case settled. If the case is not settled by December 10, 1990, the parties should be encouraged to continue with an attempt, but the settlement facilitator should return to the Court of Appeals the Settlement Week Outcome Report and any materials borrowed from the Court. Counsel for the parties should be asked to inform the Court of Appeals liaison if the case is settled later.

12. TOLLING OF APPELLATE PROCESS

From the date a case is assigned to the settlement conference until December 10, 1990, all requirements of the appellate process shall be suspended. Upon completion of the settlement procedure, if settlement has been reached, the appellant shall reduce the settlement to writing and shall prepare an agreement that the appeal shall be dismissed, signed by both parties; and an order of dismissal, approved by both parties, which shall be filed with the Court of Appeals. If the case is not settled prior to December 10, 1990, the appeal shall be placed back on the regular schedule. Any filing deadline which would otherwise fall between the date of the assignment of the case to a settlement conference and December 10, 1990, shall automatically be extended so that the full time period for filing shall commence on December 10, 1990. If the parties have been able during the course of the conference to narrow the issues, then the facilitator shall so notify the court in writing signed by the attorneys for both parties. If it appears that the parties are likely to achieve settlement but are unable to resolve the case before December 10, 1990, the facilitator may contact the Court of Appeals liaison to obtain a reasonable extension of the requirements of the appellate process to permit the parties to continue to explore settlement. The liaison shall prepare an order of extension and file it in the court file and will send counsel copies.

[sms:202]

COURT OF APPEALS
1990 SETTLEMENT CONFERENCE PROGRAM

TIME CHART

<u>Date</u>	<u>Action</u>
Sept. 20	<p>Court adopts procedures, pursuant to SCRA 1986, 12-313, for the 1990 Settlement Conference Program.</p> <p>Court selects members of the bar to be invited to serve as as facilitators in the program.</p>
Sept. 27	<p>Court sends letters to the facilitators requesting their assistance in the program and requesting confirmation if they are able and willing to accept the position.</p>
Oct. 10	<p>Court follows up with telephone calls to facilitators who have not responded.</p>
Oct. 17	<p>Court sends letter to facilitators confirming their acceptance and enclosing a copy of the procedures (including this Time Chart).</p> <p>Liaison (Chief Staff Attorney of the Court) prepares a check list for facilitators.</p> <p>Liaison prepares a list of cases concerning the appellate standard of review</p> <p>Liaison prepares a Settlement Week Outcome Report form.</p>
Oct.17 - 31	<p>Clerk of the Court segregates cases for inclusion in the program and designates each case for assignment to a specific facilitator, giving priority to those located in cities nearest counsel for the parties.</p> <p>Court enters an order in each case assigning that case to a facilitator, giving the facilitator's name, address and phone number. The assignment order is filed in the court file.</p>

Oct. 17 - 31
(cont'd)

Clerk sends to counsel in each assigned case the assignment order and the procedures (including this Time Chart), calling specific attention to the duty of counsel to set up a conference call with the facilitator to arrange for the settlement conference.

Clerk sends the following to each facilitator:

- a. for each case assigned to the facilitator, a copy of the briefs and calendaring notices from the number 1 court file, the index to the district court record, and tape monitor log, if any, and the assignment order, ;
- b. a notification of the time and place of the training session;
- c. the check list and the list of cases prepared by the liaison;
- d. a Settlement Week Outcome Report form for each case assigned; and
- e. training materials.

Clerk sends to each district court clerk a letter, enclosing the procedures and a list of the facilitators, advising the clerks of the program, and requesting the clerks' cooperation with facilitators and the Court.

Nov. 1-26

Facilitators obtain access to record proper, transcripts, tapes, exhibits, etc., as provided in procedures, and prepare for conferences.

Nov. 8

Court representatives present, and facilitators attend, training session held live in Albuquerque and videotaped for later distribution to facilitators unable to attend.

Nov. 26 - 30.

Facilitators, counsel and parties hold Settlement Conferences during Settlement Week.

Dec. 1-10

Facilitators and counsel hold follow up telephone conferences to explore progress.

Dec. 10

Facilitators file Settlement Week Outcome Report with the Court and return all records, tapes, exhibits, etc. obtained from the Clerk, except for the materials sent with the assignment order or sent prior to the entry of the assignment order.

After Dec. 10

Facilitator advises liaison of any cases in which an extension of time may be warranted, and the Clerk or the liaison advise counsel of any extension granted by the Court.

Counsel may report further settlement progress through the facilitator or directly to the Court.

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