

**GUIDELINES FOR CONDUCT OF
PRE-ARGUMENT CONFERENCE
UNDER THE CIVIL APPEALS MANAGEMENT PLAN**

The conference is held by Staff Counsel with attorneys for the parties under Rule 5 of the Civil Appeals Management Plan, Rules of the Second Circuit of Appeals, Appendix, Part C.

1. Purposes

The purposes are to consider the possibility of settlement, simplification of the issues, and any other matters which may aid in the processing and disposition of the appeal. Experience shows that preliminary review of the issues by the parties with Staff Counsel often leads to a realistic and less partisan view of the changes of success, resulting in settlement or withdrawal of some appeals or particular issues.

With a view to enabling the parties to resolve issues, Staff Counsel, after hearing counsel, is ordinarily expected to give them the benefit of his view of the merits or other aspects of the appeal.

2. Authority, Preparation and Attitude of Parties

The success of the conference depends on the attorneys treating it as a serious and non-perfunctory procedure which can often save time and expense for the parties. All sides should be thoroughly prepared to discuss in depth the alleged errors and the reasons for their positions. Attorneys should obtain advance authority from their clients to make such commitments as may reasonably be anticipated.

3. Good Faith and Non-Coerciveness

The parties are obligated to participate in good faith with a view to resolving differences as to the merits and issues. This process requires each attorney, no matter how strong his or her views, to exercise a degree of objectivity, patience and cooperation that will permit him or her to make a decision based on reason. In this process the Staff Counsel, who provides objective expertise in a form for appraisal of the merits and expedition of each appeal, is entitled to their respect and his views should be carefully considered. His views, however, are his own and not those of the court, with which he does not communicate about a case. If, after this procedure, attorneys believe in good conscience that they cannot reach an agreement, they are not under any compulsion to do so.

4. Confidentiality

All matters discussed at a conference, including the views of Staff Counsel as to the merits, are confidential and not communicated to any member of the court. Likewise parties are prohibited from advising members of the court or any unauthorized third parties of discussions or action taken at the conference. *In re Lake Utopia Paper Limited*, 608 F.2d 928 (2d Cir. 1979). Thus the court never knows what transpired at a conference.

5. Presence of Clients

Ordinarily attorneys are expected to attend the conference without their clients. However, with the permission of Staff Counsel, clients may attend with their attorneys. In the limited number of cases where Staff Counsel reasonably believes that the presence of a client might be helpful he may request -- or, in exceptional circumstances, require -- an attorney to have his client attend the conference with him. Staff Counsel does not talk with clients outside of the presence of their attorneys.

6. Conferences By Telephone or at Distant Locations

Where considerable distances or other substantial reasons warrant, Staff Counsel may in appropriate cases conduct arranged telephonic conferences. Where a sufficient number of cases can be accumulated and judicial efficiency and economy permits, Staff Counsel may also hold conferences within the Circuit, at locations other than Foley Square, New York City.

These provisions are designed to accommodate parties whose attorneys would otherwise be seriously inconvenienced by being forced to travel long distances or for other reasons.

7. Scheduling orders

In the interest of obtaining prompt resolution of appeals, most scheduling orders in the Second Circuit are somewhat tighter than the schedules provided for in the Federal Rules of Appellate Procedure. See FRAP 31(a).

8. Grievances

Any grievances as to the handling of any case under the CAMP program should be addressed to the Assistant Circuit Executive for Legal Affairs, Elizabeth Cronin, room 612, who will hold them confidential on behalf of the Circuit Court of Appeals unless release is authorized by the complainant.