

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

SEP 29 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LINDSAY HECOX and JANE DOE,  
with her next friends Jean Doe and John  
Doe,

Plaintiffs - Appellees,

v.

BRADLEY LITTLE, in his official  
capacity as Governor of the State of  
Idaho; et al.,

Defendants - Appellants,

and

MADISON KENYON and MARY  
MARSHALL,

Intervenors.

No. 20-35813

D.C. No. 1:20-cv-00184-DCN  
U.S. District Court for Idaho, Boise

**ORDER SETTING  
ASSESSMENT CONFERENCE**

**Date: October 22, 2020  
Time: 10:00 a.m. Pacific Time**

**(DIAL-IN CONFERENCE)**

LINDSAY HECOX and JANE DOE,  
with her next friends Jean Doe and John  
Doe,

Plaintiffs - Appellees,

v.

BRADLEY LITTLE, in his official  
capacity as Governor of the State of

No. 20-35815

D.C. No. 1:20-cv-00184-DCN  
U.S. District Court for Idaho, Boise

Idaho; et al.,

Defendants,

and

MADISON KENYON and MARY  
MARSHALL,

Intervenors - Appellants-  
Intervenors.

The Mediation Program of the Ninth Circuit Court of Appeals facilitates settlement while appeals are pending. See Fed. R. App. P. 33 and Ninth Circuit Rule 33-1.

The court has scheduled a dial-in telephone assessment conference with counsel and Circuit Mediator Chris Goelz at the date and time indicated above to explore settlement potential.

Each attorney on the attached list of participants will receive an email with dial-in information.

If there are any changes or additions to the list, please notify the Mediation Office at [mediation@ca9.uscourts.gov](mailto:mediation@ca9.uscourts.gov).

Also, if counsel has an unavoidable scheduling conflict, please notify Circuit Mediator Chris Goelz immediately by email ([chris\\_goelz@ca9.uscourts.gov](mailto:chris_goelz@ca9.uscourts.gov)) and copy all counsel on any such communication.

All emails should include the Ninth Circuit case number in the subject line.

All discussions that take place in the context of the assessment conference are strictly confidential. See Circuit Rule 33-1.

For more detailed information about the assessment conference, confidentiality, and the Mediation Program and its procedures generally, please see the attachment to this order and the Mediation Program web site:  
[www.ca9.uscourts.gov/mediation](http://www.ca9.uscourts.gov/mediation).

The briefing schedule previously set by the court will be reset by separate order.

FOR THE COURT:

Lynn Warton  
Deputy Clerk

lw/mediation

LIST OF CONFERENCE PARTICIPANTS

LINDSAY HECOX;et al.  
Plaintiff - Appellee,

James D. Esseks  
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ACLU-American Civil Liberties Union  
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American Civil Liberties Union of  
Idaho Foundation

v.

BRADLEY LITTLE, in his official capacity as  
Governor of the State of Idaho;et al.  
Defendant - Appellant,

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W. Scott Zanzig  
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AGID - Idaho Office of the Attorney  
General

MADISON KENYON;et al.  
Intervenor,

Bruce D. Skaug  
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SKAUG LAW, P.C.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
CIRCUIT MEDIATION OFFICE

Website: [www.ca9.uscourts.gov/mediation](http://www.ca9.uscourts.gov/mediation)

Email: [chris\\_goelz@ca9.uscourts.gov](mailto:chris_goelz@ca9.uscourts.gov)

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**INFORMATION ABOUT ASSESSMENT CONFERENCES**

**Overview of Purpose and Participants**

- The purpose of the assessment conference is to provide an opportunity for counsel and the Circuit Mediator to have a frank discussion about settlement. The mediator will explore the parties' interests in settlement and, if appropriate, work with counsel to design a process to pursue resolution of the dispute.
- The conference will be conducted by one of the eight Circuit Mediators, all of whom are court employees with extensive mediation and litigation experience. The conference typically lasts from 30-60 minutes. The Circuit Mediators are authorized to file orders on most procedural matters, including vacating or moving the briefing schedule.
- Counsel for each party that intends to file a brief in this matter should participate in the assessment conference. The lawyer with the closest relationship to the client should be on the call. Clients are neither expected nor required to participate in the assessment conference.
- In advance of the conference, counsel should have a discussion with their clients about their goals in the litigation, its possible costs and outcomes (good and bad), the potential for further legal proceedings, and what issues beyond the litigation might be explored in mediation.
- During the conference, counsel and the Circuit Mediator will discuss the factual and legal background of the dispute, the legal issues involved in the litigation and on appeal, any related legal proceedings, and any other considerations that may affect the parties' willingness to engage in settlement discussions. The scope of discussions is not limited to the issues on appeal: it may include related legal proceedings or any other issues between the parties.

### **Confidentiality**

- Settlement-related information disclosed to a Circuit Mediator will be kept confidential and will not be disclosed to the judges deciding the appeal or to any other person outside the Mediation Program participants. Ninth Cir. R. 33-1.
- All participants in the assessment conference are required to abide by the court's confidentiality rules, which are set forth in Rule 33-1 and can be found at [www.ca9.uscourts.gov/mediation](http://www.ca9.uscourts.gov/mediation). With limited exceptions, any communication made by the Circuit Mediator or any participant during the conference may not be used in any pending or future proceeding in this court or any other forum and may not be disclosed to anyone who is not a participant. Ninth Cir. 33-1.

### **Likely Outcomes of Assessment Conference**

- At the conclusion of the assessment conference, the Circuit Mediator may confirm in an order the agreements of the parties regarding the scope, process and timing of any further settlement efforts. Typical settlement processes include in-person mediation sessions, telephone settlement dialogues facilitated by the Circuit Mediator, or direct discussions between counsel.
- The parties may agree to extend briefing in order to focus on settlement efforts. In most cases, the deferral of briefing will not delay disposition of the appeal because the date of the filing of the notice of appeal controls when an appeal is assigned to a three-judge panel for decision.
- If at any point that the parties choose not to pursue settlement efforts, the Circuit Mediator will work with counsel to resolve any outstanding procedural issues and will enter orders effectuating any procedural agreements.

**More information is available on the Mediation Circuit link on the Ninth Circuit website [www.ca9.uscourts.gov/mediation](http://www.ca9.uscourts.gov/mediation).**