

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are *not* confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	14-35903	
District Court/Agency Case Number(s):	3:12-cv-02265-SI	
District Court/Agency Location:	Portland	
Case Name:	United States of America	v. City of Portland
If District Court, docket entry number(s) of order(s) appealed from:	86	
Name of party/parties submitting this form:	Defendant-Appellant City of Portland	

Please briefly describe the dispute that gave rise to this lawsuit.

42 U.S.C. Section 14141 authorizes the U.S. to file suit against governmental entities based upon the conduct of its law enforcement officers. In September 2012, the U.S. found reasonable cause to believe the City had engaged in a pattern or practice of unconstitutional use of force against persons in mental health crisis. The City disputed those findings. Prior to filing its complaint, the U.S. negotiated a settlement agreement with the City. The parties agreed that the US would file the complaint and settlement simultaneously, dismiss the case, and have the court review compliance only upon an assertion by the U.S. of a material breach that could not be resolved by the parties. Upon reviewing the Agreement, however, the district court asked the parties to devise a process for providing the court with ongoing information about the City's progress. The City and U.S. stipulated to two different processes, neither of which the court approved.

Briefly describe the result below and the main issues on appeal.

On August 29, 2014, the court issued an order conditionally dismissing the case. As a condition of the dismissal, however, the court also ordered the parties, intervener-defendant, and amicus curiae to subsequently appear at hearings whenever called by the court and to produce such evidence as requested by the court. The City's position was that the district court could accept one of the process proposed by the parties (which included annual status conferences), but could not order post-dismissal evidentiary hearings unless the U.S. alleged a material breach of the settlement agreement. The U.S. argued in response that the court could order post-dismissal hearings of any kind. The three main issues on appeal are (a) whether Federal Rule of Civil Procedure 41(a)(2) authorizes a court to impose conditions on a dismissal without defendant's consent; (b) whether the district court has jurisdiction to convene post-dismissal ancillary proceedings unrelated to enforcement of the parties' settlement agreement and; (c) whether the district court's order changed the terms of the settlement agreement in contravention of *Evans v Jeff D.*, 475 U.S. 717 (1986) and *Officers for Justice v. Civil Serv. Comm'n.*, 688 F2d 615 (9th Cir 1982).

Describe any proceedings remaining below or any related proceedings in other tribunals.

The district court has docketed a hearing for September 14, 2015 at 9:00 a.m. The City also intends to file an alternative petition for writ of mandamus in the near future.

Provide any other thoughts you would like to bring to the attention of the mediator.

The City welcomes mediation in this case. The City believes strongly that mediation would allow the parties to identify and agree on processes that would provide the district court with the information it needs to monitor the parties' compliance with their settlement agreement while maintaining appropriate procedural safeguards.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached
 (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list
 may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **To file this form electronically** in Appellate ECF, complete the form, and then print the filled-in form to PDF (File > Print > PDF Printer/Creator). Then log into Appellate ECF and choose Forms/Notices/Disclosure > File a Mediation Questionnaire.

9th Circuit Case Number(s) 14-35903

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) [] .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) []

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) [Nov 3, 2014] .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

See Attachment A

Signature (use "s/" format) s/ Ellen Osoinach

ATTACHMENT A

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