

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SUNIL AGGARWAL, et al.,
Petitioners,

v.

UNITED STATES DRUG ENFORCEMENT
ADMINISTRATION, et al.,
Respondents.

No. 22-1718

**JOINT MOTION TO REFER CASE TO MEDIATION
FOR NEGOTIATION OF EAJA FEES**

Petitioner and respondents jointly request that the Court refer the case to mediation for the purpose of negotiating fees under the Equal Access to Justice Act, 28 U.S.C. § 4212. In support of this motion, the parties state the following:

1. This case concerns the denial of a petition under the Controlled Substances Act to reschedule psilocybin. After DEA denied the petition in September 2022, petitioners sought this Court’s review. On October 27, 2023, this Court granted the petition for review and remanded the case “for the DEA to either clarify its pathway for denying [the] petition or reevaluate [the] petition on an open record.”

Memorandum Order 5, ECF No. 82.1. Petitioners sought panel rehearing, and this Court denied the rehearing petition on December 12, 2023. ECF No. 85.1.

2. On March 22, 2024, petitioners filed a motion concerning attorneys’ fees under the Equal Access to Justice Act, 28 U.S.C. § 2412. Petitioners explained that the

parties are engaged in settlement discussions and requested this Court's leave to file a skeletal application for fees and costs, which may be altered or supplemented with supporting documentation and argument if the parties are not able to resolve the fee dispute through settlement discussions. Petitioners additionally requested that this Court stay further briefing on the fee matter until 30 days after either party notifies the Court that the parties are unable to reach a settlement agreement. Respondents did not oppose this motion. This Court granted the motion on March 26, 2024, ECF 89.1, and petitioners filed their skeletal fee motion on April 10, 2024, ECF No. 90.1.

3. Petitioners and respondents believe that the Ninth Circuit Mediation Program could facilitate their efforts to reach an agreement on attorneys' fees. The parties recognize that "attorneys' fees motions filed in this [C]ourt are regularly referred to mediation," U.S. Court of Appeals for the Ninth Circuit, *The Mediation Process*, <https://www.ca9.uscourts.gov/mediation/the-meditation-process/> (last visited May 17, 2024), and they are prepared to participate in good faith with the Circuit Mediator in the mediation process. Petitioners and respondents therefore respectfully request that this case be referred to the Circuit Mediation Program for the purpose of negotiating EAJA fees.

[Signature Page Follows]

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), I hereby certify that this motion complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it was prepared with Garamond 14-point, a proportionally spaced font with serifs, and the motion complies with Federal Rule of Appellate Procedure 27(d)(2) because it contains 371 words, according to the word count of Microsoft Word.

/s/ Catherine Padhi

Catherine Padhi

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2024, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Catherine Padhi
Catherine Padhi

FILED

UNITED STATES COURT OF APPEALS

MAY 24 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, C.
U.S. COURT OF APPE

Doctor SUNIL AGGARWAL, MD, PhD,
FAAPMR, FAAHPM,

No. 22-1718

Petitioner,

Drug Enforcement Agency

v.

ORDER

UNITED STATES DRUG
ENFORCEMENT ADMINISTRATION,

Respondent,

END OF LIFE WASHINGTON, et al.;

Amici Curiae.

Before: IKUTA, BADE, and BRESS, Circuit Judges.

Pursuant to the agreement of the parties, this case is referred to the Circuit Mediation Office.

The Circuit Mediator shall contact the parties to schedule mediation and provide a status report to the panel within sixty (60) days following this order. The parties shall file a joint status report every ninety (90) days after mediation begins. Within ten (10) days after mediation is completed, the parties shall file a status report. If mediation is unsuccessful, the case will be returned to the panel.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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MAY 28 2024

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

Doctor SUNIL AGGARWAL, MD,
PhD, FAAPMR, FAAHPM,

Petitioner,

v.

UNITED STATES DRUG
ENFORCEMENT ADMINISTRATION,

Respondent,

END OF LIFE WASHINGTON, et al.;

Amici Curiae.

No. 22-1718

District No.

**ORDER SETTING ASSESSMENT
CONFERENCE**

Date: 6/12/2024

Time: 11:00 AM Pacific Time
(DIAL-IN CONFERENCE)

This fee matter has been referred to mediation. See Fed. R. App. P. 33 and Ninth Cir. R. 33-1.

The court has scheduled a dial-in telephone assessment conference with counsel on the date and time indicated above.

Each participant on the attached list 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.

Also, please notify Circuit Mediator Steven Saltiel immediately by email (Steven_Saltiel@ca9.onmicrosoft.com) if counsel has an unavoidable scheduling conflict. Please copy all counsel on any such communications.

All communications should include the Ninth Circuit case name and number in the subject line.

All discussions that take place in the context of the conference are confidential. See Cir. R. 33-1.

For more detailed information about the assessment conference, confidentiality, 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.

FOR THE COURT:

By: Steven Saltiel
Circuit Mediator

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FOR THE COURT:

By: Steven Saltiel
Circuit Mediator

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

Website: www.ca9.uscourts.gov/mediation

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Phone: 415-355-7900

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 nine Circuit Mediators, all of whom are court employees with extensive mediation and litigation experience. Appeals are randomly assigned to the Circuit Mediators irrespective of the subject matter or issues on appeal. The Circuit Mediators are authorized to file orders on most procedural matters, including vacating or moving the briefing schedule.
- Counsel for all parties who intend to file briefs in the case 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. (See the court's website for a list of questions for exploring the suitability of the dispute for settlement.)
- 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 and can 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 Mediation Program's confidentiality rules. 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. Gen. Or. 7.4.

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 defer briefing in order to focus on settlement efforts or to provide an opportunity for circumstances to develop that might make settlement more likely. In most cases, the deferral of briefing will not delay disposition of the appeal, since the date of the filing of the notice of appeal controls when an appeal is assigned to a three-judge panel for decision.
- At any point that the parties choose not to pursue settlement efforts, the Circuit Mediator will work with the parties 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.