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**From:**

**Sent:** Monday, March 4, 2013 2:44 PM

**To:**

**Cc:**

**Subject:** RE: Follow-up on Rev Proc 2009-44

You asked whether it was permissible for counsel to participate in a post Appeals mediation. The short answer is yes it is permissible. Both Rev. Proc. 2009-44, 2009-2 C.B. 462, which provides procedures for post Appeals mediation, and Rev. Proc. 2012-18, 2012-10 I.R.B. 455, which clarifies the rules for ex-parte communications between Appeals and other functions, provide that the ex parte communication rules do not apply to communications in connection with the optional mediation process that may be requested after traditional Appeals settlement discussions are unsuccessful. Appeals is expected to independently decide whether to engage in post Appeals mediation, and whether to accept or reject a settlement proposal that is made as a result of the mediation; however, Appeals has the discretion to communicate with both counsel and the origination function to prepare for the mediation session. In addition, Appeals may ask counsel or the originating function to observe or participate during the mediation session.