



**MAGISTRATE JUDGE KERI HOLLEB HOTALING**

**219 South Dearborn Street**

**Courtroom# 1700**

**Chambers# 1756**

**Chicago, Illinois 60604**

**Phone: (312) 435-3063**

**Courtroom Deputy – Rosa Franco  
Room# 1726 / Phone: (312) 435-7558**

*Chambers\_HollebHotaling@ilnd.uscourts.gov*

**STANDING ORDER ON SETTLEMENT CONFERENCES**

The Court believes the parties should fully consider settlement at the earliest reasonable opportunity in a case. Even if the case cannot be settled, early consideration of settlement often can result in focusing the issues to be litigated – which can save the parties considerable time and money. The vast majority of all civil suits settle prior to trial. Therefore, settlement preparation should be treated as seriously as trial preparation.

This Order sets out the procedures parties are to follow in preparing for a settlement conference, and the procedures the Court typically will employ in conducting the conference. Failure to comply with the procedures set forth in this Order may result in the unilateral cancellation of the settlement conference by the Court.

**1. PRE-SETTLEMENT CONFERENCE CALL.** Judge Holleb Hotaling typically schedules settlement conferences at least one month out from the current date, so plan accordingly when seeking a settlement referral in your case. Upon referral for settlement, the Court will set a conference call for the purpose of scheduling your settlement conference. At this relatively brief initial conference, which is about settlement only and is off the record, counsel for the parties will dial into the Court's conference line, which will be provided on the docket.

Counsel that appears for the pre-settlement telephone call must be counsel who will represent their respective clients at the conference, or are able to discuss the issues of the case and to schedule the conference on behalf of their clients. The Court expects counsel to discuss issues in the case that may affect the settlement process. The Court will confirm whether the parties are genuinely prepared to negotiate at a settlement conference, and if they are, the Court will outline its procedures and set a mediation schedule. If they are not, the conference is an opportunity to discuss what else might need to happen before a settlement conference can be set, or whether either of the parties is simply unwilling to negotiate at that time.

After the pre-settlement conference phone call, the Court will enter a minute order specifying the settlement conference date and the appropriate dates for settlement letters to be exchanged. Once the date for a settlement conference is set, that date can only be changed by motion. Similarly, failure to comply with the schedule for exchange of settlement letters will be viewed as a violation of a court order; counsel cannot agree to amend the letter exchange deadlines amongst themselves, but must contact Chambers if they need to amend the schedule.

The majority of settlement conferences before Judge Holleb Hotaling will be Cisco WebEx videoconferences. On occasion, the Court will set an in-person settlement conference. Shortly before the settlement conference, a member of the Court's staff will solicit the contact information of all who are connecting remotely to the video settlement conference. Those persons will later receive an email invitation through which they will join the video meeting on the day of the conference.

The fact that a settlement conference has been scheduled does not mean the parties should stop engaging in settlement discussions among themselves. The Court finds that too often the parties put settlement talks on hold until the settlement conference with the Magistrate Judge. The Court expects that *many* cases can be resolved among the parties without the need for court-supervised mediation. If your informal discussions are unsuccessful, the Court will expect the parties to describe in detail their settlement efforts apart from the exchange of letters required herein.

**2. PRESETTLEMENT CONFERENCE DEMAND AND OFFER.** The timing for the exchange of settlement correspondence will be governed by the docketed minute order setting your settlement conference. Per that schedule, plaintiff's counsel is to simultaneously submit a demand letter to opposing counsel and to the Court (using the Chambers email address listed in the header of this Standing Order). In response, and according to the timing set forth on the docket, defendant's counsel is to submit an offer letter to opposing counsel and to the Court (using the same email address). Do not file copies of these letters on the docket or in the Clerk's Office. Please ensure you copy opposing counsel on all email communications with the Court. The Court does not routinely accept courtesy copies of settlement letters, but will notify you if a paper copy is necessary.

All parties are to consider **the issues set forth below in Paragraph 4** when drafting their letters, and are to be mindful that while the parties themselves are intimately familiar with their case, these settlement letters are likely the first introduction Judge Holleb Hotaling will have to the facts and issues attendant to settling the case. Therefore, the parties' respective letters should inform the Court about the case background and issues accordingly. Parties are encouraged to be frank and open in their discussions, while treating each other with courtesy and respect.

Plaintiffs are directed to include a demand that is *not* what plaintiff expects to win at trial, but a number that takes into account the risk of loss. If a demand includes multiple components, plaintiffs are directed to include a single lump-sum settlement demand amount, and a breakdown of any itemized amounts, including attorneys fees. Punitive damages are not appropriate to include in a settlement demand; however, a plaintiff may note they would seek punitive damages at trial, but that amount is not to be included as part of the demand during the settlement process. Similarly, defendants are expected to offer a number that does not assume zero liability. The Court views both a full-win demand and a zero offer as non-starting bargaining positions; these are not acceptable positions for a settlement letter. Similarly, the number in a party's letter must not merely reiterate a demand/offer made in the past, but it *must* be compromised from that prior position. Your settlement letter should reiterate the history (including dates) of all prior demands/offers made in the case, if any. The Court retains discretion to reject any letters that do not comply with this rule.

As part of the pre-settlement process, the Court may conduct *ex parte* conversations with any party about the issues raised in its letter or the productivity of any settlement conference. If the Court engages in such communication, a subsequent docket entry will reflect that communication.

On occasion, the exchange of settlement letters will lead directly to a settlement. If it does, the parties are to notify the Court as soon possible so we may attempt to schedule another case in your time slot. Similarly, if the parties must reschedule, or have concluded that a settlement conference is not necessary or helpful at this time, they should inform Chambers as soon as possible.

**3. CONFERENCE FORMAT.** All individuals participating in a settlement conference are expected to join their respective virtual settlement conference room 10 minutes before the start of the conference. A member of Chambers will ensure everyone is present and there are no technical issues. Counsel should ensure that clients joining remotely are engaged and prepared to participate fully by video, from a location free from distractions and with a stable internet connection.

There will be opening statement/presentation at the start of the conference. Judge Holleb Hotaling will jointly welcome parties and their counsel and will then hold private caucuses with each party,

typically starting with the plaintiff, then going back and forth as negotiations dictate. Counsel will have opportunities to talk privately with their client(s) without the Court present at various points throughout this process. The Court expects both the lawyers and the party representatives to be fully prepared to participate openly during a settlement conference.

The Court encourages parties and counsel to consider providing opportunities to junior and diverse lawyers to substantively participate in the settlement conference.

**4. ISSUES TO BE DISCUSSED AT SETTLEMENT CONFERENCE.** Parties should preview the following issues, as appropriate, in their settlement letters and be prepared to discuss the same at the settlement conference:

1. What are your objectives in the litigation?
2. What issues (in and outside of this lawsuit) need to be resolved? What are the strengths and weaknesses of your case?
3. Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?
4. What are the points of agreement and disagreement between the parties? Factual? Legal?
5. What are the impediments to settlement?
6. What remedies are available through litigation or otherwise?
7. Are there possibilities for a creative resolution of the dispute?
8. Do you have adequate information to discuss settlement? If not, how will you obtain sufficient information to make a meaningful settlement discussion possible?
9. Are there outstanding liens? Do we need to include a representative of the lien holder?

**5. ATTENDANCE OF PARTIES REQUIRED.** Parties with ultimate settlement authority **must be personally present.** An insured party shall appear with a representative of the insurer who is authorized to negotiate, and who has *authority to settle the matter up to the limits of the opposing parties' existing settlement demand.* An uninsured corporate party shall appear by a representative authorized to negotiate, and who has *authority to settle the matter up to the amount of the opposing*

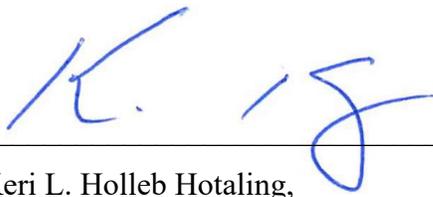
*parties' existing settlement demand or offer.* Having a client with authority available by telephone is **not** an acceptable alternative. Because the Court generally sets aside at least three hours for each conference, it is impossible for a party who is not present to appreciate the process and the reasons which may justify a change in one's perspective towards settlement. Sanctions will apply if this order is violated.

**6. IF A PARTY DOES NOT SPEAK ENGLISH.** If a party does not speak English, that party is responsible for an interpreter for the duration of the settlement conference. Please note: interpreter's competency will include the ability to translate word for word (real-time) during the settlement conference. Sanctions will apply if this order is violated.

**7. STATEMENTS INADMISSIBLE.** Statements made by any party in their settlement letters and during the settlement conference are not to be used in discovery and will not be admissible at trial as set forth in Local Rule 83.5 and Federal Rule of Evidence 408.

**8. INVOLVEMENT OF CLIENTS.** For many clients, this will be the first time they have participated in a court-supervised settlement conference. Therefore, **counsel shall provide a copy of this Standing Order to the client and shall discuss the points contained herein with the client prior to the settlement conference. Additionally, Counsel shall provide copies of both parties' settlement letters to their respective clients prior to the settlement conference date.** The Court expects both the lawyers and the party representatives to be fully prepared to participate. The Court encourages all parties to keep an open mind in order to re-assess their previous positions and to find creative means for resolving the dispute.

Entered: January 24, 2024



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Keri L. Holleb Hotaling,  
United States Magistrate Judge