

United States District Court
For The Northern District of Illinois
Eastern Division

1.

INSTRUCTIONS FOR SETTLEMENT CONFERENCE FOR CASES ASSIGNED TO
U.S. DISTRICT JUDGE VIRGINIA M. KENDALL

Over 95% of all civil suits are settled prior to trial. For those cases that can be resolved through settlement, early consideration of settlement can allow the parties to avoid unnecessary litigation as well as the substantial cost, expenditure of time, and distraction and anxiety that are typically part of the litigation process. Even for those cases that cannot be resolved through settlement, early consideration of settlement can allow the parties to better understand the factual and legal nature of their dispute and thus focus the issues to be litigated.

Given the importance of settlement, and the fact that it is by settlement that the vast majority of cases are resolved, settlement preparation should be treated as seriously as trial preparation. Set forth below are the procedures that the Court will require the parties to follow in preparing for the settlement conference and the procedures that the Court typically will employ in conducting the conference.

For many clients, this will be the first time they have participated in a court supervised settlement conference. *Counsel are directed to provide a copy of this Standing Order to their clients and to discuss the procedures with them in advance of the conference.*

Any party who wishes to vary any of the procedures described in this Standing Order should make an appropriate request to the Court prior to the exchange of settlement letters described below.

1. Pre-conference demand and offer. Settlement conferences are more likely to be productive if the parties have previously exchanged demands and offers and have made a good faith effort to settle the case on their own. Accordingly, at least fourteen (14) days before the settlement conference, the plaintiff shall submit a written itemization of damages and a settlement demand to the defendant. No later than seven (7) days before the settlement conference, the defendant shall submit a written offer to the plaintiff. On occasion, this process will lead directly to a settlement. If settlement is not reached, the parties shall deliver or fax copies of the letters to Judge Kendall's chambers no later than two (2) days before the settlement conference. The *letters are not to be filed with the Clerk* and will be discarded at the close of the case.

2. Attendance of parties required. Parties with ultimate settlement authority must be personally present at the settlement conference, unless otherwise ordered by the Court. This means that if a party is an individual, that individual must personally attend; if a party is a corporation or governmental entity, a representative of the corporation or governmental entity who is authorized to negotiate and who has full settlement authority must personally attend; if a party requires approval by an insurer to settle, then a representative of the insurer who is authorized to negotiate and who

has full settlement authority must attend. Having a client with authority available by telephone is *not* an acceptable alternative, except under the most extenuating circumstances. The Court sets aside a significant amount of time for each settlement conference and believes that it is impossible for a party who is not present to appreciate fully the process and the reasons that may justify a change in one's perspective towards settlement.

3. Conference format. The Court generally will follow a "mediation" format: opening presentations by each side to the other side, followed by a joint discussion with the Court and private meetings by the Court with each side. The Court expects both the lawyers and the party representatives to be fully prepared to participate in the discussions and meetings. In these discussions, the Court encourages all parties to be willing to reassess their previous positions and to be willing to explore creative means for resolving the dispute.

4. Statements inadmissible. Any statements made by any party or attorney during the settlement conference will not be admissible at trial. The Court expects the parties to address each other with courtesy and respect but at the same time strongly encourages the parties to be frank and open in their discussions.

5. Issues to be discussed at settlement conference. Parties should be prepared to discuss the following issues at the settlement conference:

- a. What do you hope to achieve in the litigation?
- b. What are the strengths and weaknesses of your case?
- c. What are the points of agreement and disagreement between the parties (both factual and legal)?
- d. What are the impediments to settlement?
- e. What remedies are available through litigation or otherwise?
- f. What will be the estimated cost of the litigation?
- g. Do you have adequate information to discuss settlement? If not, how will you obtain sufficient information to make a meaningful settlement discussion possible?
- h. Are there outstanding liens? Should a representative of the lienholder be included in the conference?

ENTER:

VIRGINIA M. KENDALL
United States District Judge

Dated: February 2, 2006