

**MAGISTRATE JUDGE JEFFREY COLE**  
**219 South Dearborn Street**  
**Courtroom 1838, Chambers 1828**  
**Chicago, IL 60604**  
**(312) 435-5601**

**INSTRUCTIONS AND PROCEDURES FOR SETTLEMENT CONFERENCES**

The importance of settlements in the federal system cannot be overestimated. *See generally Merek v. Chesny*, 473 U.S. 1 (1985). The historically-strong federal policy favoring settlement of cases, is, if anything, even stronger today in light of the continued expansion of court dockets and the inability of the system to try every case. The consequence of this expansion, among other factors, has resulted in most cases being settled rather than tried. *See discussion in Foster v. National City Bank*, 2007 WL 1655250 at \*3 (N.D.Ill. 2007)(collecting cases).

Experience has taught the wisdom of early consideration of settlement. The reasons are many and obvious. *See EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7<sup>th</sup> Cir. 1985). Settlement allows the parties to avoid the risks of all litigation, and the substantial cost, expenditure of time, and the emotional toll that are inherently a part of the litigation process. In an address to the Bar Association of the City of New York in 1921, Learned Hand, then a young district judge, lamented:

“After now some dozen years of experience I must say that as a litigant I should dread a lawsuit beyond almost anything else short of sickness and death.” Lectures on Legal Topics, Learned Hand, *The Deficiencies Of Trials to Reach the Heart of the Matter*, 105 (The MacMillan Co.1926).

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 the cases, which can save the parties considerable time and money by eliminating claims and defenses that cannot and ought not be advanced.

**PRE-SETTLEMENT CONFERENCE MEMORANDA/POSITION PAPERS:**

- Prior to the conference (and in conformity with the time table set forth below), the parties will exchange position papers that provide a comprehensive analysis, both legal and factual, of their respective positions and, where possible, analyze what they perceive to be the weaknesses of their opponent’s presentation.
  
- **SUPERFICIAL AND SKELETAL PRESENTATIONS THAT DO NOTHING MORE THAN STATE ULTIMATE CONCLUSIONS ABOUT THE VALIDITY OF ONE’S POSITION – OR THE INVALIDITY OF AN ADVERSARY PARTY’S POSITION – AND MAKE AN UNSUPPORTED DEMAND OR OFFER SERVE NO USEFUL PURPOSE AND WILL NOT BE ACCEPTED.** For example, it is not acceptable to say my client is entitled to \$x because he was discriminated against because

of his race, gender, disability, etc.

- Thus, each memorandum must contain an explanation of the actual evidence in support of the author's position and a discussion of the legal principles (supported by appropriate case authority) on which the parties rely to establish or refute liability.
- Each memorandum must also contain an explanation of why damages or other relief would appropriately be granted at trial, with an itemization of the damages plaintiff believes can be proven at trial, and an explanation of how those damages were computed including a discussion of the legal principles supporting those damages. Finally, each memorandum must contain a specific settlement demand or offer.
- The purpose of the memoranda is, in part, to encourage a meaningful and informed assessment of their own and their opponent's positions, thereby promoting the kind of informed assessment of the whole case that is essential regardless of whether the case is tried or settled. Former Attorney general Edward Levi was fond of quoting Cicero as saying that if you couldn't state your opponent's case you did not know your own. Thus, the memorandum of each side ought to be able to explain the weakness of the opponent's case as readily as it can explain the strength of its own position. All parties must be willing to reassess their previous positions and should be willing to explore creative means for resolving the dispute.
- At least 14 calendar days prior to the date of the settlement conference, plaintiff's counsel shall serve on defense counsel its pre-settlement conference memorandum.
- At least 7 calendar days before the settlement conference, defendant's counsel shall serve on plaintiff's counsel its responsive memorandum, which shall include at least the following information: (a) any points in plaintiff's letter with which the defendant *agrees*, (b) any points in plaintiff's letter with which defendant *disagrees*, with references to supporting evidence and legal principles, and (c) a settlement offer.
- These memoranda typically should be five pages or less. However, if counsel believes that more pages are required to provide the comprehensive presentation required, the memorandum may be as long as deemed necessary. Significant and supporting exhibits may be attached and are often quite helpful both to the court and to opposing counsel. **If exhibits are included, they must be tabbed with protruding tabs in accordance with Local Rule 5.2.**
- Plaintiff's counsel shall deliver copies of these memoranda to chambers by no later than 4 calendar days before the conference. **DO NOT FILE COPIES OF THESE LETTERS IN THE CLERK'S OFFICE.** The foregoing schedule is designed to ensure that the Court and the parties have enough time to prepare for the conference, and must be followed unless the Court issues an order in the case establishing a different schedule.
- **ATTENDANCE OF PARTIES REQUIRED.** Unless the Court allows otherwise by

separate order, *parties with full and complete settlement authority are required to personally attend the conference*. 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 that corporation or governmental entity (other than counsel of record) with full and complete settlement authority must personally attend.

- “Full and complete settlement authority” means the authority to negotiate and agree to a binding settlement agreement at any level up to the settlement demand of the plaintiff. If a party requires approval by an insurer to settle, then a representative of the insurer with full and complete settlement authority must attend. Experience has shown that the personal presence of the parties, and their direct participation in the discussion almost always increases the likelihood of settlement. Thus, absent a showing of unusual and extenuating circumstances, a client will not be permitted to participate by phone.
- A significant amount of time is set aside far in advance for each settlement conference. Noncompliance with all the above requirements can have a significant and obvious adverse effect on the orderly handling of cases. *See Perry v. Jones*, 2007 WL 1455863 (N.D.Ill. 2007).
- **CONFERENCE FORMAT.** A mediation format will generally be followed. Each side, if it wishes, may have an opportunity to make a presentation of its position, which will be followed by joint discussion with the Court and private meetings between the Court with each side, as deemed necessary. Here, as always, preparation and participation are the keys to a successful conference.
- **STATEMENTS INADMISSIBLE.** Any statements made by any party during the settlement conference will be governed by Rule 408, Federal Rules of Evidence. The Court expects the parties to address each other with courtesy and respect, but at the same time strongly encourages the parties to speak frankly and openly about their views of the case.

**ANY PARTY WHO WISHES TO VARY ANY OF THE PROCEDURES SET FORTH IN THIS STANDING ORDER MUST MAKE AN APPROPRIATE REQUEST TO THE COURT PRIOR TO THE EXCHANGE OF SETTLEMENT LETTERS DESCRIBED ABOVE.**

**ENTER:**

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**JEFFREY COLE**  
**United States Magistrate Judge**

**October 3, 2007**