

United States District Court
Northern District of Illinois – Eastern Division
March 12, 2004

Standing Order Regarding Settlement Conferences With Judge Mark Filip

A settlement can offer many potential advantages for parties --- including savings in terms of time, costs, and anxiety that often accompany the litigation process. In this regard, it is instructive to note that over 95% of all civil cases are resolved without a trial.

As a result, the Court views the issue of potential settlement as a serious one. Parties and their counsel are encouraged to consider the possibility of a negotiated resolution at all stages of the litigation process. In addition, the Court expects counsel to prepare themselves thoroughly for settlement conferences. The settlement dialogue is an integral part of the litigation process in the vast majority of cases.

1. **PRE-CONFERENCE DEMAND AND OFFER**

At least fourteen days before the settlement conference, plaintiff's counsel shall submit a letter to defendant's counsel that itemizes the claimed damages and provides a brief explanation of why such a settlement is appropriate. At least seven days before the settlement conference, defendant's counsel shall submit a written offer to plaintiff's counsel with a brief explanation of why such a settlement is appropriate. On occasion, this process and the dialogue related to it will produce a settlement. If settlement is not achieved, the parties' counsel shall deliver or fax copies of these letters to Judge Filip's chambers no later than three full business days before the conference. *Do not file copies of any settlement letters in the Clerk's Office.* All settlement letters will be discarded by Judge Filip at the close of the case.

2. **ATTENDANCE OF PARTIES REQUIRED**

Parties with ultimate settlement authority must be personally present. An insured party shall appear by 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, except in the most extenuating circumstances. (The purchase of an airplane ticket is not an extenuating circumstance). Because the Court generally sets aside at least two 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.

3. **CONFERENCE FORMAT**

The Court generally will conduct a settlement conference in a mediation-style format. Under this format, each side will have the opportunity to make an opening statement to the other party and its counsel. Opening statements should be concise and framed with an appreciation that the actual parties to the litigation often are not attorneys. After opening statements, the two sides will engage in a joint discussion with the Court's involvement and input. The Court then will meet privately with each party.

During the settlement conference, parties are strongly encouraged to reassess their previous positions, and to be willing to explore creative means for resolving the dispute. In this regard, parties and their counsel are reminded that an out-of-court settlement provides an opportunity to structure a resolution that is not limited to the issues that can be addressed at trial or the potential remedies available under the law related to them. For example, a settlement may address continued business relationships or resolution of other conflicts between the parties.

4. STATEMENTS INADMISSIBLE

Statements made by any party or attorney at the settlement conference, or in the correspondence required in preparation for the settlement conference, are inadmissible at trial. *See* Fed. R. Evid. 408. As a consequence, the Court strongly encourages parties and counsel to be open and frank in their discussions. In addition, the Court expects parties and counsel at all times to be courteous and professional in communications with each other.

5. INVOLVEMENT OF CLIENTS

For many parties, this will be the first time they have participated in a court supervised settlement conference. *Therefore, counsel shall provide a copy of these instructions to their clients and should discuss these procedures with them prior to the settlement conference.*

6. REQUIRED READING

Counsel and parties should read [Top Ten Ways To Prevent Settlement](#), by United States Magistrate Judge Morton Denlow (N.D. Ill.).

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Any party who requests to vary the procedures set forth in this Standing Order must submit the request to the Court in writing prior to the established due dates.