

A. Before the Settlement Conference—Telephonic Status Hearing and Exchange of Settlement Statements

The Court will generally hold a telephonic status hearing to set dates for the settlement conference and the exchange of pre-conference settlement statements to opposing counsel and the Court. Counsel primarily responsible for representing the parties must participate in this telephonic status hearing. Counsel should come prepared to discuss the availability of both attorneys and decision makers who will participate in the settlement conference, consistent with the requirements of this order.

Particularly if the case is in the early stages of discovery, the parties should consider whether they have the necessary information to engage in meaningful settlement discussions and, if not, raise the issue during the telephonic status hearing.

If a party is claiming an inability to pay a judgment, counsel should also raise this issue at the telephonic status hearing and will be expected to provide verification of that fact prior to the settlement conference

Consistent with the schedule that is set, plaintiff's counsel must submit a settlement statement to defendant's counsel. Plaintiff's settlement letter must set forth the following information:

- A. a brief summary of the evidence and legal principles that support plaintiff's theory of liability, damages, and any other relief;
- B. a settlement proposal that includes both monetary and any non-monetary relief requested;
- C. An itemization of the damages plaintiff believes can be proven at trial and a brief summary of the evidence and legal principles supporting those damages;
- D. A description of the discovery that has been completed or that is outstanding, including the number of depositions that have been taken or are contemplated by each party, a description of any discovery that is outstanding, and a summary of any future discovery that is contemplated; and
- E. any additional information plaintiff believes would be helpful to the Court in assisting the parties to resolve the dispute.

Plaintiffs are expected to submit a demand that is not what they expect to win at trial, but rather a number that takes into account the risk of loss and cost savings from settling before dispositive motions are filed and/or trial.

Defendant's counsel must thereafter submit a settlement statement to plaintiff's counsel. Defendant's settlement letter must set forth the following information:

- A. any point(s) in plaintiff's letter with which the defendant agrees;
- B. any point(s) in plaintiff's letter with which defendant disagrees;
- C. a settlement offer that is responsive to the monetary and non-monetary elements of relief that plaintiff seeks in its settlement demand;
- D. A brief summary of the evidence and legal principles defendant asserts will defeat plaintiff's claim(s) and allow defendant to prevail; and
- E. Any additional information defendant believes would be helpful to the Court in assisting

the parties to resolve the dispute.

Defendants are expected to offer a number that does not assume that there will be no liability.

Parties are encouraged to consider addressing in their settlement statements whether there are any areas of agreement; whether there are any creative solutions (e.g., licensing agreement, allowing the use of a trademark, re-employment); whether there are any outstanding lien holders, particularly a Worker's Compensation lien or a Medicare lien; and, any and all non-monetary material terms that the parties seek (e.g., confidentiality, tax treatment of settlement proceeds).

Settlement statements should be no more than 10 pages each.

The Court does not accept courtesy copies. Dates to exchange settlement statements, as well as dates to submit those statements to the Court will be provided to the parties. All settlement statements should be sent to the Court via the following email address: Chambers_Berry@ilnd.uscourts.gov.

Exhibits, if any, to settlement statements should be attached to the email sent to the Court. The parties' settlement statements are not to be filed on ECF, will not be made part of the Court's record, and will not be admissible as evidence.

The parties should invest sufficient time and effort when preparing their settlement statements because the Court finds that thoughtful and detailed settlement statements are critical to having productive settlement discussions. Parties are forewarned that failure to account for the risks and costs associated with proceeding with litigation in their settlement positions may result in the Court unilaterally canceling the settlement conference as a waste of the parties' time and money, as well as Court resources. In some circumstances, after reviewing the parties' settlement statements, the Court will set an off-the-record telephone conference before the settlement conference to determine if it will be productive. The Court may also separately contact counsel for one or both parties but will let the other party or parties know if/when this happens.

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 communications and the settlement conference. Additionally, Counsel shall provide copies of both parties' settlement letters to their respective clients prior to the settlement conference date.** On occasion, this exchange process itself will lead to a settlement. The fact that a settlement conference has been scheduled does not mean that 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. Indeed, the parties should have multiple discussions about settlement between the date the Court sets the settlement conference and the actual date of the conference.

In some cases, the Court will hold a telephone conference with one or both parties to discuss the information in the letters. Prior to any *ex parte* communications, the Court will make the parties aware and offer an opportunity to object to such communications. During the telephone

conference, the Court will seek to identify any issues or disputes that can be addressed or resolved prior to the settlement conference and will review the offers with the parties. The Court will also assess whether the parties continue to believe that a settlement conference will be productive.

B. Persons Required to Attend the Settlement Conference

Parties with full settlement authority are required to attend the conference. If a party is an individual, that individual must attend. If a party is a corporation or governmental entity, a representative of that corporation or governmental entity (in addition to counsel of record) with full settlement authority must attend. “Full settlement authority” means the authority to negotiate and agree to a binding settlement agreement at any level up to the settlement demand of the opposing party. If a party requires approval by an insurer to settle, then a representative of the insurer with full and complete settlement authority must attend.

The Court strongly believes that the presence of the individuals with a stake in the outcome of the settlement conference, and their participation in the settlement discussions and in the compromise that occurs at the conference, materially increases the chances of settlement. The Court will not permit a party, party representative, or an insurance representative merely to be available by telephone during the conference. In addition, absent Court permission, failure to attend or attendance without full settlement authority may result in sanctions. If a conference must be adjourned or continued so that a party can obtain additional authority to reach a settlement that was reasonably within the realm of possibility for the case, that party may be sanctioned, including being required to pay the opposing party’s attorney’s fees and costs incurred by the need to reconvene. See Fed.R.Civ.P.16(c)(1), 16(f)(1)(A) and (B), and 16(f)(2).

C. Conference Format

Depending upon the circumstances of the case, Judge Berry III holds settlement conferences in one of the following formats: (1) in-person; (2) virtually via Cisco WebEx or Microsoft Teams videoconference, or (3) hybrid (some participants appear in-person and others appear virtually).

Typically, participants in an in-person conference will report to Judge Berry III’s courtroom; participants often are relocated to other rooms in the courthouse for the settlement conference.

If the settlement conference is by videoconferencing technology, **all parties are required to be on camera**. The Court’s staff will hold a test run with the parties 15 to 30 minutes prior to the conference. All attorneys and party representatives must log on at that time. All attorneys are responsible for themselves and their clients in ensuring an error-free settlement conference. This includes functioning cameras, speakers, and microphones without static or interference. The Court will not allow any counsel or party to appear using a cell phone. All participants must use a computer or tablet or be in the same room as someone with a computer or tablet. Any counsel may email the Courtroom Deputy for a test run several days before the conference if they are concerned about the technology.

Both by video and in person, the Court generally holds a joint session with short opening remarks and questions by the Court, generally with no opening presentations by the parties. The Court

encourages law firms to consider whether other members of their firm would benefit from observing the settlement conference, even if they are not actively participating.

This short, joint session will be followed by each party having private caucuses with the Court. The Court expects both the lawyers and the party representatives to be fully prepared to participate openly during these discussions.

D. Confidentiality

The pre-conference letters and the settlement conference are governed by Local Rule 83.5 relating to Confidentiality of Alternative Dispute Resolution Proceedings. Any statements made by any party during the settlement conference will not be admissible at trial pursuant to Federal Rule of Evidence 408. The Court expects the parties to address each other with courtesy and respect, and also to speak frankly and openly about their views of the case in this confidential setting.

E. Interpreters

If a party does not speak English, that party is responsible for an interpreter for the duration of the settlement conference. Please note: the interpreter must be able to translate word for word (real-time) during the settlement conference. Sanctions will apply if this order is violated.

F. Prohibition on Photographs, Recordings, and Rebroadcasts

The parties are reminded that all communications with the Court on settlement, including the settlement conferences, ex parte calls, and hearings, whether by video, phone or in person, cannot be photographed, recorded, or rebroadcasted, as with other court proceedings. Any violation of these prohibitions may result in sanctions deemed necessary by the Court.

G. Cancellation or Rescheduling of the Conference

If the parties must reschedule, or if they conclude that a settlement conference is not necessary at this time, they should inform chambers as soon as possible. Counsel and parties are cautioned that failure to attend a scheduled settlement conference without advance notice to the Court may result in the imposition of monetary sanctions against them.