



**JUDGE JEFFREY I. CUMMINGS**  
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## **STANDING ORDER FOR SETTLEMENT CONFERENCES**

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The Court believes that the parties should fully consider settlement at the earliest reasonable opportunity in the 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. A settlement conference requires serious and thorough preparation. It is this Court’s standard practice to refer parties to the assigned Magistrate Judge to preside over settlement conferences. If circumstances suggest that it may be most productive for this Court to preside over a settlement conference, the Court may elect to do so with the parties’ consent.

This Order sets out the procedures the parties are to follow in preparing for the settlement conference before this Court, and the procedures that 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. Counsel must provide a copy of this Order to their clients and discuss these procedures with them before the settlement conference.

**Unless otherwise ordered, all settlement conferences will be conducted remotely via video conferencing.**

## A. INITIAL STATUS REPORT ON SETTLEMENT

Upon agreement by the parties and the Court to proceed with a settlement conference before this Court instead of the assigned Magistrate Judge, Judge Cummings will enter a minute order requesting the submission of a joint status report on settlement to this Court's settlement correspondence mailbox ([Settlement\\_Correspondence\\_Cummings@ilnd.uscourts.gov](mailto:Settlement_Correspondence_Cummings@ilnd.uscourts.gov)) within 14 days. Counsel primarily responsible for representing the parties must participate in preparing the joint status report on settlement.

In the joint status report on settlement, the parties should address the following issues: (1) whether the parties have the necessary information to conduct meaningful settlement discussions; (2) the earliest anticipated date when all parties will be ready to participate in a productive settlement conference and the parties mutually available dates for a remote settlement conference in the months specified in the Court's minute order requesting the status report; (3) any circumstances that would warrant an expedited conference; (4) whether the parties have engaged in previous settlement discussions and the current status of those discussions; (5) the individuals who will be present at the settlement conference on behalf of their respective parties, consistent with the requirements of this Order; and (6) whether there are outstanding lien holders or third parties who must provide information or should participate in the settlement conference.

The Court will schedule a settlement conference upon receipt of the joint status report on settlement in consideration of the above factors, the parties' availability, and the Court's calendar.

## B. SETTLEMENT CONFERENCE PREPARATION

### 1. PRE-SETTLEMENT CONFERENCE LETTERS

Settlement conferences are more likely to be productive if, before the conference, the parties have had a written exchange of their settlement positions. Accordingly, Judge Cummings will set a schedule for the exchange of pre-conference when scheduling the settlement conference. **Each party shall email a copy of its letter to Judge Cummings' chambers on the same day that it is provided to opposing counsel. The subject line of the email shall include the case name, case number, and the date of the settlement conference.** The email address for the submission of settlement letters to the Court is [Settlement\\_Correspondence\\_Cummings@ilnd.uscourts.gov](mailto:Settlement_Correspondence_Cummings@ilnd.uscourts.gov). These letters are **not** electronically filed on the court docket.

The plaintiff's counsel's settlement letter must set forth the following information: (a) a brief summary of the evidence and legal principles that plaintiff asserts will allow it

to establish liability; (b) a brief explanation of why damages or other relief would appropriately be granted at trial; (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; and (d) a settlement demand. Plaintiff's settlement demand must be all inclusive and specify each element of monetary and non-monetary relief that plaintiff seeks to settle the case. For example, a settlement demand stating that plaintiff seeks \$20,000, a reasonable accommodation, and her reasonable attorney's fees and costs is non-compliant because it does not specify the particular accommodation and the fees and costs that are sought. Finally, plaintiff's settlement demand should take into account the risk that plaintiff might lose the case. Settlement demands that state the maximum relief that plaintiff might recover at trial are unproductive.

Defense counsel's letter must set forth 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; and (c) a settlement offer that is responsive to the monetary and non-monetary elements of relief that plaintiff seeks in its settlement demand. Defendants are expected to make a settlement offer that does not assume that there will be no liability. Judge Cummings will not proceed with a settlement conference unless defendant makes a written settlement offer.

All parties shall include within their letters the names and titles of the individuals they anticipate will be attending the settlement conference. Where possible, parties should attempt to include in their submissions settlements or awards after trial in comparable cases. **Each of these letters should be six pages or fewer, exclusive of exhibits unless prior leave of Court is sought.** Counsel are required to provide copies of the settlement letters to their clients to read prior to the conference. Courtesy copies are not required unless otherwise requested by the Court.

Unless a party states otherwise, a party's agreement to participate in a settlement conference implicitly includes consent that Judge Cummings may discuss settlement matters with counsel for that party or its opponent *ex parte* (i.e., without the opposing party or its counsel present.) Occasionally, Judge Cummings will enter an order scheduling a pre-conference telephonic status hearing with counsel for all parties after reading the parties' settlement letters.

## **2. ISSUES TO BE DISCUSSED AT THE SETTLEMENT CONFERENCE**

Parties should be prepared to discuss the following at the settlement conference:

- What are your goals in the litigation and what problems and issues (in and outside of the lawsuit) would you like to address in the settlement conference? Does settlement or further litigation better enable you to accomplish your goals?

- What are the strengths and weaknesses of your case?
- Do you understand the opposing side's goals and view of the case? What is wrong with their perception? What is right with their perception?
- What are the points of agreement and disagreement between the parties? Factual? Legal?
- What are the impediments to settlement? Financial? Emotional? Legal?
- What remedies are available through litigation or otherwise?
- Are there possibilities for a creative resolution of the dispute?
- If the case does not settle, what are the likely (and possible) legal and practical consequences for all concerned?
- Are there outstanding liens? Do we need a representative of the lienholder at the settlement conference?
- Please consider whether your client has received or will be receiving conditional payments from Medicare to pay for treatment related to this case. If so, you must bring a conditional pay letter from Medicare to the settlement conference. Your client may access their payments directly by logging to his MyMedicare.gov account. As his attorney, you may request such a letter at <https://www.cob.cms.hhs.gov/MSPRP/>, but must pre-register to do so by submitting proper proof of representation or consent to release this information. You should expect Medicare to demand at least 60% of its conditional payments to your client to resolve the case.

### **C. CONFERENCE FORMAT**

Judge Cummings will generally use a mediation format, which will begin with a joint discussion with Judge Cummings, followed by private meetings by him with each side. Judge Cummings expects both the lawyers and the party representatives to be fully prepared to participate in the discussions and meetings. They should also be willing to reassess their previous positions to explore creative means for resolving the dispute. If a party requests a settlement conference but refuses to compromise in any way during the conference, Judge Cummings will terminate the settlement conference and may consider the entry of sanctions if that party acted in bad faith.

#### **D. CONFIDENTIALITY**

The pre-settlement conference letters required by this Order and communications during the settlement conference are confidential and inadmissible at trial as set forth in Local Rule 83.5 relating to Confidentiality of Alternative Dispute Resolution Proceedings, and Federal Rule of Evidence 408.

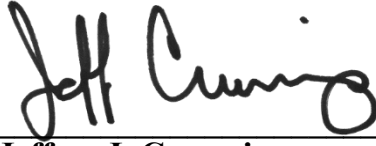
#### **E. PERSONS WITH SETTLEMENT AUTHORITY**

Judge Cummings reserves a block of time for each settlement conference. This time is wasted and opposing parties incur unnecessary expense if a party or insurer comes to the settlement conference with less authority than necessary to settle the case. Therefore, a party or its representative attending the settlement conference must have full settlement authority, meaning the authority to negotiate and agree to a binding settlement agreement at any level up to the settlement demand of the opposing party. This requirement is intended to avoid a situation where a party or its representative comes to a settlement conference with authority that is less than what reasonably could be within the realm of possibility for the case. Judge Cummings strongly believes that the personal presence of those with full settlement authority, and their direct participation in the discussions and “give and take” that occur, will materially increase the chances of settlement. A party that comes to a settlement conference without full settlement authority as described in this Order can be sanctioned. If a conference must be adjourned or continued so that a party can obtain additional authority to reach a settlement that reasonably was 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).

#### **F. FAILURE TO APPEAR AND CANCELLATION OF THE CONFERENCE**

Because of the number of settlement conferences that Judge Cummings conducts, it is necessary that they be scheduled several weeks and sometimes months in the future. Once a date is reserved for a settlement conference, the time is unavailable for other litigants. Counsel and the parties are cautioned that failure to attend a settlement conference may subject a party to sanctions. No conference, once scheduled, shall be rescheduled except by court order pursuant to written motion made and noticed not less than 14 days in advance of the conference. The motion shall fully explain the reasons for the requested extension and be supported by an affidavit/declaration justifying the need for the continuance. Telephonic requests to reschedule a settlement conference will not be entertained in the absence of exigent circumstances.

**ENTER:**

A handwritten signature in black ink, appearing to read "Jeff Cummings". The signature is written in a cursive style with a large, looped "C" at the end.

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**Jeffrey I. Cummings**  
**United States District Court Judge**

**Dated: October 27, 2023**