



MAGISTRATE JUDGE SHEILA FINNEGAN
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Courtroom 2214
Chambers 2206
Chicago, IL 60604
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STANDING ORDER FOR SETTLEMENT CONFERENCES

Judge Finnegan believes the parties should fully explore and consider settlement at the earliest opportunity. Early consideration of settlement can prevent unnecessary litigation. This allows the parties to avoid the substantial cost, expenditure of time, and stress that are typically a 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 streamline the issues to be litigated.

Consideration of settlement is a serious matter that requires thorough preparation prior to the settlement conference. Set forth below are the procedures that Judge Finnegan will require the parties to follow and the procedures that she will employ in conducting the conference.

A. INITIAL STATUS HEARING

After the referral of a case for a settlement conference, Judge Finnegan often will hold an initial status hearing or arrange a telephone conference to discuss the case. Counsel primarily responsible for representing the parties must participate. Issues that typically are discussed include: (1) whether the parties have the necessary information to conduct meaningful settlement discussions; (2) whether there are outstanding lien holders or third parties who must provide information or should participate in the settlement conference; (3) the optimal format for the settlement conference; and (4) the individuals who will be present at the settlement conference on behalf of their respective parties, consistent with the requirements of this order.

If Judge Finnegan does not set a date for an initial status hearing or telephone conference and the parties would like one, they are to contact the courtroom deputy with available

dates. Unless a party states otherwise, a party's agreement to participate in a settlement conference implicitly includes consent that Judge Finnegan 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 Finnegan arranges for separate telephone conferences with counsel after reading the parties' settlement letters and in advance of the settlement conference. If she has such a telephone conference, Judge Finnegan enters an order reflecting this on the docket (i.e., "Telephone conference held with Plaintiff's counsel for discussion of settlement issues.")

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 Finnegan will set a schedule for the exchange of pre-conference letters. The letter prepared by Plaintiff's counsel is usually provided to defense counsel at least twenty-one (21) days prior to the settlement conference with the responding letter from defense counsel due seven (7) days prior to the conference. Each party emails a copy of its letter to Judge Finnegan's chambers on the same day that it is provided to opposing counsel. The email address is Chambers_Finnegan@ilnd.uscourts.gov. These letters are not filed on the court docket. Plaintiff's letter should contain a written itemization of damages and a settlement proposal with a brief explanation of why such a settlement is appropriate. The letter prepared by Defendant's counsel should contain a written offer with a brief explanation of why such a settlement is appropriate and should identify the points in Plaintiff's letter with which it agrees and disagrees. Plaintiffs are directed to include a proposal that is not what they expect to win at trial, but rather one that takes into account the risk of loss. Similarly, defendants are expected to make a proposal that does not assume that there will be no liability. Counsel are required to provide copies of the settlement letters to their clients to read prior to the conference.

2. PREPARE FOR SUCCESS

In anticipation of a settlement, the parties should review and be prepared to complete Judge Finnegan's [Settlement Checklist/Term Sheet](#) at the conclusion of the settlement conference. This sheet may be found on Judge Finnegan's homepage on the court's website (under the heading "Settlement Conferences").

3. COURT ENFORCEMENT OF SETTLEMENT TERMS

Parties contemplating a settlement that provides for enforcement of the settlement terms in federal court are encouraged to review the article, “What’s an Attorney to Do? Ensuring Federal Jurisdiction Over Settlement Agreements in Light of Recent Seventh Circuit Cases” and the sample dismissal orders contained in the article’s appendix. Here is a link to the article: [What’s an attorney to do](#).

4. ISSUES TO BE DISCUSSED

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? If Medicare or Medicaid has paid any of the plaintiff’s medical expenses, does the plaintiff have a conditional payment letter?

C. CONFERENCE FORMAT

Judge Finnegan will generally use a mediation format: each side will have an opportunity to make a presentation to the other side (if desired), which will be followed by joint discussion with Judge Finnegan and private meetings by her with each side. Judge

Finnegan 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 requested conference, Judge Finnegan will impose appropriate sanctions on that party.

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. Judge Finnegan expects the parties to address each other with courtesy and respect, but also speak frankly and openly about their views of the case.

E. PERSONS WITH SETTLEMENT AUTHORITY

Judge Finnegan reserves a substantial 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. While one might question the phrasing of this requirement given that cases typically settle at less than the settlement demand, the 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 Finnegan 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 Federal Rule of Civil Procedure 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 Finnegan 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 or cancellation (in the absence of a settlement) 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 and comprehensively explain the reasons for the requested extension and be supported by affidavit or declaration by a person testimonially competent to make the representations justifying the need for the continuance. Thus, an affidavit or declaration of counsel recounting information received from a third person whose situation necessitates the continuance will not suffice. Telephonic requests to reschedule a settlement conference will not be entertained in the absence of exigent circumstances.

ENTER:

Dated: November 13, 2017

**SHEILA FINNEGAN
United States Magistrate Judge**