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STANDING ORDER ON SETTLEMENT CONFERENCES

The Court believes the parties should fully consider settlement at the earliest reasonable opportunity in a 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. The vast majority of all civil suits settle prior to trial. Therefore, settlement preparation should be treated as seriously as trial preparation.

This Order sets out the procedures parties are to follow in preparing for a settlement conference, and the procedures 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.

1. PRE-SETTLEMENT CONFERENCE CALL. Judge Holleb Hotaling typically schedules settlement conferences approximately two to four months from the call date, so plan accordingly when seeking a settlement referral in your case. Upon referral for settlement, the Court will set a conference call for the purpose of scheduling your settlement conference. On this call, which is about settlement only and is off the record, counsel for the parties will dial into the Court's conference line, which will be provided on the docket.

Counsel that appears for the pre-settlement telephone call must be counsel who will represent their respective clients at the conference or are able to discuss the issues of the case and issues that may affect the settlement conference and to schedule the conference on behalf of their clients. Counsel must have the necessary clients' (**see Paragraph 5**) and attorneys' schedules (particularly unavailable dates) for at least four months so that a firm settlement conference date can be set on the call. The Court will confirm whether the parties are genuinely prepared to negotiate at a settlement conference, and if they are, the Court will outline its procedures and set a mediation format (**see Paragraph 3**) and schedule. If they are not, the conference is an opportunity to discuss what else might need to happen before a settlement conference can be set, or whether either of the parties is simply unwilling to negotiate at that time.

After the pre-settlement conference phone call, the Court will enter a minute order specifying the settlement conference date and the appropriate dates for settlement letters to be exchanged. Once the date for a settlement conference is set, that date can only be changed by motion. Similarly, failure to comply with the schedule for exchange of settlement letters will be viewed as a violation of a court order; counsel cannot agree to amend the letter exchange deadlines amongst themselves but must contact Chambers to seek any amendment to the schedule.

The fact that a settlement conference has been scheduled does not mean 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. The Court expects that *many* cases can be resolved among the parties without the need for court-supervised mediation. If your informal discussions are unsuccessful, the Court will expect the parties to describe in detail their settlement efforts apart from the exchange of letters required herein.

2. PRESETTLEMENT CONFERENCE DEMAND AND OFFER. The timing for the exchange of settlement correspondence will be governed by the docketed minute order setting your settlement conference. Per that schedule, plaintiff's counsel is to simultaneously submit a demand letter to opposing counsel and to the Court (using the Chambers email address listed in the header of this Standing Order). In response, and according to the timing set forth on the docket, defendant's counsel is to submit an offer letter to opposing counsel and to the Court (using the same email address). Do not file copies of these letters on the docket or in the Clerk's Office. Please ensure you copy opposing counsel on all email communications with the Court unless otherwise directed by the Court during ex parte communications. The Court does not routinely accept courtesy copies of settlement letters but will notify you if a paper copy is necessary.

All parties are to consider **the issues set forth below in Paragraph 4** when drafting their letters and are to be mindful that while the parties themselves are intimately familiar with their case,

these settlement letters are likely the first introduction Judge Holleb Hotaling will have to the facts and issues attendant to settling the case. Therefore, the parties' respective letters should inform the Court about the case background and issues accordingly. Parties are encouraged to be frank and open in their discussions, while treating each other with courtesy and respect.

Plaintiffs are directed to include a demand that is *not* what plaintiff expects to win at trial, but a number that takes into account the risk of loss. If a demand includes multiple components, plaintiffs are directed to include a single lump-sum settlement demand amount, and a breakdown of any itemized amounts, including attorneys' fees. Punitive damages are not appropriate to include in a settlement demand; a plaintiff may note they would seek punitive damages at trial, but that amount is not to be included as part of the demand during the settlement process. Similarly, defendants are expected to offer a number that does not assume zero liability. The Court views both a full-win demand and a zero offer as non-starting bargaining positions; these are not acceptable positions for a settlement letter. **Similarly, the number in a party's letter must not merely reiterate a demand/offer made in the past, but it *must* be compromised from that prior position; the compromise must be monetary, not just the removal of a non-monetary term.** Your settlement letter should reiterate the history (including dates) of all prior demands/offers made in the case, if any. The Court may reject letters that do not comply with this rule. The parties also must be prepared to further negotiate from their written demands or offers. In other words, a party may not stand upon the demand or offer included in its written submissions to the Court but must be willing to meaningfully compromise from that position after submitting it. If there is no willingness to negotiate, there is no work for the mediator to perform.

As part of the pre-settlement process, the Court frequently conducts ex parte conversations with any party about the issues raised in its letter or the productivity of any settlement conference. The Court typically notifies counsel before beginning ex parte communications, begins such communications with ex parte telephone calls with both sides, and makes a docket entry to reflect each telephonic communication. The Court will not necessarily make a docket entry for each follow-up ex parte email communication.

On occasion, the exchange of settlement letters will lead directly to a settlement. If it does, the parties are to notify the Court as soon possible so we may attempt to schedule another case in your time slot. Similarly, if the parties must reschedule, or have concluded that a settlement conference is not necessary or helpful at this time, they should inform Chambers as soon as possible.

3. CONFERENCE FORMAT. Depending upon the circumstances of the case, Judge Holleb Hotaling holds settlement conferences in one of the following formats: (1) in-person; (2) virtually via Cisco WebEx videoconference, or (3) hybrid (some participants appear in-person and others appear virtually). Counsel should consult the order setting the settlement conference for details and **see**

Paragraph 5 for information on who must attend the settlement conference. Typically, participants in an in-person conference will report to Judge Holleb Hotaling's courtroom listed above; participants often are relocated to other rooms in the courthouse for the settlement conference. For virtual and hybrid settlement conferences, shortly before the video settlement conference, a member of the Court's staff usually will solicit the contact information of all who are connecting remotely. Those persons will later receive an email invitation through which they will join the video meeting on the day of the conference. In some instances, the link may be emailed to counsel to distribute to their participants within the days preceding the settlement conference. If, as occurs occasionally, an attorney will appear in-person for a client who is appearing virtually, the attorney must bring a laptop with the attorney's own internet connectivity (through a hotspot or the like) to connect with the client by video.

Well before a settlement conference with a virtual component is set to begin, all virtual participants in the settlement conference should ensure that they have installed WebEx on the device they will use to connect. They should not connect using a cell phone but must be on a tablet or laptop with a stable internet connection, in a location free from distractions. All individuals participating in a virtual settlement conference (or who are appearing virtually in a hybrid settlement conference) are expected to join their respective virtual settlement conference 15 minutes before the start of the conference. All participants must appear on video. A member of Chambers will ensure everyone is present and there are no technical issues. Counsel should ensure that clients joining remotely are engaged and prepared to participate fully by video, consistent with the foregoing.

There will be no opening statement/presentation at the start of the conference. Judge Holleb Hotaling will jointly welcome parties and their counsel and will then hold private caucuses with each party, typically starting with the plaintiff, then going back and forth as negotiations dictate. Counsel will have opportunities to talk privately with their client(s) without the Court present at various points throughout this process. The Court expects both the lawyers and the party representatives to be fully prepared to participate openly during a settlement conference.

The Court encourages parties and counsel to consider providing opportunities to junior lawyers to substantively participate in the settlement conference.

4. ISSUES TO BE DISCUSSED AT SETTLEMENT CONFERENCE. In addition to the demand or offer, parties should preview the following issues, as appropriate, in their settlement letters and be prepared to discuss the same at the settlement conference:

1. What are your objectives in the litigation?

2. What issues (in and outside of this lawsuit) need to be resolved? What are the strengths

and weaknesses of your case?

3. Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?

4. What are the points of agreement and disagreement between the parties? Factual? Legal?

5. What are the impediments to settlement?

6. What remedies are available through litigation or otherwise?

7. Are there possibilities for a creative resolution of the dispute?

8. Do you have adequate information to discuss settlement? If not, how will you obtain sufficient information to make a meaningful settlement discussion possible?

9. Are there outstanding liens? Do we need to include a representative of the lien holder?

5. ATTENDANCE OF PARTIES REQUIRED. Parties with ultimate settlement authority must be personally present absent explicit advance approval from Judge Holleb Hotaling. An insured party shall appear with 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. Because the Court generally sets aside at least three 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. **Sanctions will apply if this order is violated.**

6. IF A PARTY DOES NOT SPEAK ENGLISH. 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.**

7. STATEMENTS INADMISSIBLE. Statements made by any party in their settlement communications and during the settlement conference are not to be used in discovery and will not be admissible at trial as set forth in Local Rule 83.5 and Federal Rule of Evidence 408.

8. INVOLVEMENT OF CLIENTS. 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**. The Court expects both the lawyers and the party representatives to be fully prepared to participate and to negotiate from their demand or offer in good faith. The Court encourages all parties to keep an open mind in order to re-assess their previous positions and to find creative means to resolve the dispute.

Entered: October 15, 2024

Keri L. Holleb Hotaling,
United States Magistrate Judge