

Settlement Conferences with Judge Shah

1. Exchange of Pre-Conference Demand And Offer

Prior to the settlement conference and with sufficient time for a response, plaintiff's counsel shall submit a letter to defendant's counsel that itemizes the claimed damages and any other relief sought through settlement. The letter must provide a brief explanation of why such a settlement is appropriate. Defendant's counsel shall submit a written offer to plaintiff's counsel with a brief explanation of defendant's response to plaintiff's demand and an offer from defendant. If settlement is not achieved through this exchange of letters, the letters must be submitted to Judge Shah three days prior to the settlement conference. These letters should not be filed on the docket. All settlement letters will be discarded at the close of the case.

2. Additional Preparation for the Conference

Because many parties will not have previously participated in a court-supervised settlement conference, counsel are advised to provide a copy of these instructions to their clients and should discuss the procedures and strategy in advance of the conference.

Parties and counsel should be prepared to discuss the following matters:

- a. What are your objectives in the litigation?
- b. What issues (inside and outside of the lawsuit) would you like resolved?
- c. What are the strengths and weaknesses of your case?
- d. Do you understand the opposing side's view of the case? What is right and wrong with their perception of the case?
- e. What are the points of factual and/or legal agreement between the parties? In other words, where is the common ground?
- f. What are the points of factual and/or legal disagreement?
- g. What are the impediments to settlement?
- h. Are there possibilities for a creative resolution of the dispute?
- i. Do you have adequate information to evaluate settlement? If not, how can you obtain sufficient information to make meaningful settlement discussion possible?

3. Attendance Of Parties Required

Parties with ultimate settlement authority must be physically present at the conference. 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 party's existing settlement demand or offer. An uninsured corporate party shall appear by a representative authorized to negotiate, and who has authority to settle the matter up the amount of the opposing party's existing settlement demand or offer. The availability of a client by telephone is not an acceptable alternative except in the most extenuating circumstances that must be approved by the Court in advance.

4. Conference Format

The Court generally will conduct a settlement conference in a mediation-style format. Parties, counsel, and the judge will meet together at the outset, usually in chambers. At that time, the judge will make a few introductory remarks and invite each participant to make their own introductory remarks to the group as a whole. Introductory remarks should be concise, focused, and framed with an appreciation for the fact that the parties to the litigation often are not attorneys.

After introductory remarks, the parties will engage in a joint discussion with the judge's involvement and input. The judge then will meet privately and separately with each party to explore possible avenues for settlement. During this process, the Court urges all parties and counsel to keep an open mind and to be willing to reassess their previous positions and to search for creative ways for resolving the dispute.

5. Statements Inadmissible

Under the Federal Rules of Evidence, statements made by any party or attorney at the settlement conference or in correspondence required in preparation for the conference are inadmissible at trial. As a consequence, parties and counsel are strongly encouraged to be open and frank in their discussions.