

SETTLEMENT CONFERENCE PREPARATION*

***IN LIGHT OF THE COVID-19 PANDEMIC, NO HEARINGS WILL PROCEED IN PERSON UNTIL FURTHER NOTICE OR OTHERWISE ORDERED. IF YOU HAVE BEEN ORDERED TO PROCEED WITH A SETTLEMENT CONFERENCE WITH JUDGE LAMOTHE, PLEASE CONTACT THE DEPUTY CLERK, DEBBIE JOHNSTON, AT Debbie_Johnston@cacd.uscourts.gov TO SCHEDULE A TELEPHONIC SETTLEMENT CONFERENCE.**

Experience shows that in negotiations the party who is best prepared usually obtains the best result. Settlement conferences can be held more efficiently if all parties and counsel are prepared. The following are topics to consider with your client to prepare for a productive settlement conference.

A. FORMAT

1. The Court will use a mediation format. The Settlement Judge will caucus privately with each side and may address your client directly.
2. If a settlement is reached, the parties will be asked to agree to the material terms of the settlement on the record. Consider bringing to the settlement conference a formal settlement agreement in draft form on a flash drive or laptop.

B. AUTHORITY

1. Parties with ultimate settlement authority must usually be personally present at the settlement conference. *See* Civil L.R. 16-15.5(b). Are there other parties who need to be present in order to have a productive mediation? If so, notify the Court immediately.
2. Are there outstanding liens? Have you verified amounts and whether they are negotiable? Do the parties need a representative of the lien holder to attend the settlement conference? If so, notify the Court immediately.
3. Is there valid insurance coverage? In what amount? If coverage is at issue, or the amount/type affects settlement value, have you notified the other side? Do the parties need a representative from more than one carrier? If so, notify the Court immediately.

C. INTERESTS AND ISSUES

1. What would you like to accomplish at this settlement conference, and what does the Settlement Judge need to understand to help you accomplish your goals?

2. What needs of your client must be met in order for a resolution to be reached?
3. What needs of the opposing party must be met in order for a resolution to be reached?
4. Do you have enough information to value the case? If not, how are you going to get more information before the settlement conference?
5. What do you see as the obstacles to a negotiated resolution, and what ideas do you have to overcome them?
6. What are the consequences for each side if no settlement is reached?
7. What is your estimated budget to litigate this case through trial?
8. Will attorney's fees or other expenses affect settlement? Have you communicated this to the other side?

D. NEGOTIATIONS

1. Where did your last settlement discussions end?
2. What value do you want to start with and why? Have you discussed this with your client?
3. In what range of value do you want to end and why? Have you discussed this with your client?
4. Is there confidential information that affects case value? Why should this information not be disclosed? How can the opposing party be persuaded to reach this case value if it does not have this information?
5. What are the strengths and weakness of your case? What are the strengths and weakness of the other party's case?

E. CLOSING

1. What material terms do you need in your settlement agreement (*e.g.*, confidentiality, scope of the release, amount of time before check is issued, etc.)? Have you discussed these terms with your client?
2. Have you discussed settlement terms and structures with your client (*e.g.*, mediator proposals, structured settlements, annuities, and Rule 68 Offers of Judgment)?

3. If settlement is not reached and further discovery is needed, what limited discovery do you need and what is your plan for continued settlement discussions? Do you want the Court's involvement in these talks?