

**PROCEDURES APPLICABLE TO CASES REFERRED FOR SETTLEMENT
TO MAGISTRATE JUDGE DEBRA FREEMAN**

IMPORTANT NOTICE DURING PERIOD OF COVID-19 OUTBREAK:

During the period of the COVID-19 outbreak in New York City, Judge Freeman and her Chambers staff may be working remotely, and all settlement conferences will be conducted telephonically. At the scheduled time of the conference, the parties should call Toll-Free (877) 411-9748, and use Access Code: 9612281. Further, during this time, the parties should *not* send faxes to Chambers, as they may not be received. Rather than fax a confidential settlement statement pursuant to the ordinary procedures set out below, counsel should instead call (212) 805-4650 and leave a voicemail message explaining that they wish to make a confidential settlement submission. Chambers staff will return the call and provide direction as to how to make the submission. If, in connection with a settlement conference, counsel seeks to submit paper copies of any materials for the Court's advance review, then such materials should be mailed to Chambers at least 14 days in advance of the settlement conference, to allow for a potential delay in Judge Freeman's receipt of the materials.

1. Prior to any settlement conference before Judge Freeman, the parties, through counsel, must first negotiate in good faith and use best efforts to reach a settlement; at a minimum, the parties must make serious efforts to "narrow the gap" between their positions.
2. All settlement conferences before Judge Freeman will be "off the record," and all communications to the Court relating to settlement will be confidential.
3. As a settlement conference, Judge Freeman will function as a mediator, attempting to help parties reach agreement on terms of settlement. Efficient use of this process requires that counsel and their clients be (1) prepared for the conference and (2) candid with the mediator.
4. No later than two business days prior to the settlement conference, counsel to each party should submit a letter, no longer than five pages, clearly marked "CONFIDENTIAL MATERIAL FOR USE AT SETTLEMENT CONFERENCE," which need not be served on other parties, stating succinctly: (1) the history of settlement negotiations; (2) counsel's evaluation of the ultimate settlement value of the case and the rationale for it (not simply an "opening bid"); and (3) any other facts that would be helpful to the mediator in preparation for the conference. To assure receipt no later than 4:00 p.m. on the due date, it is recommended that pre-conference submissions be faxed to (212) 805-4658. **[But see above Notice regarding modification of these procedures during the COVID-19 outbreak]**
5. At the initial settlement conference, all counsel will be expected (in the presence of each other and the parties) to make a brief presentation (approximately 10 minutes) summarizing (1) the issues of fact and law which they regard as

dispositive; (2) the most recent offer or demand communicated to adverse counsel; and (3) any other matters they regard as material to settlement. Although the merits of the case are relevant to settlement value, counsel are reminded that settlement conferences are not adjudicatory in nature; discussions of legal issues should be simple and straightforward, with due regard to the importance of participation by the parties in the settlement process.

6. Where all parties are represented by counsel, Judge Freeman will also meet separately with each side. In these meetings, the parties and their counsel should be prepared to discuss the bases for their stated positions, the amount of attorneys' fees and litigation expenses incurred to date, and an estimate of the cost of litigating the case to judgment. Where any party appears *pro se*, separate meetings are not ordinarily held; in the rare circumstance where, in aid of settlement, the Court does speak privately with a *pro se* litigant, that session – as well as all joint sessions in a *pro se* case – will be recorded, although the recording will be kept confidential.
7. The presence in person of parties, as well as their lawyers, is essential to the mediation process. In particular, it is important that parties hear the adversary's presentation and have the opportunity to speak with the mediator outside the presence of any adversary. For these reasons, requests that parties be excused from the initial conference are rarely granted, unless a party is in prison or lives far away from New York City (at least 100 miles). Corporate parties or labor unions should send the person with decision-making authority who gives directions to the attorney of record. Where liability insurance is involved, a knowledgeable representative of the carrier should attend in addition to the insured. Where any government agency is a party, the attorney of record should generally be accompanied by a representative of the agency involved in the case, regardless of who has ultimate authority to recommend or approve settlement.
8. If a party fails to attend the settlement conference with all the required persons (attorney, plus a decision-making employee from the client, plus a decision-making representative from the insurance carrier), that party may be required to reimburse all the other parties for their time and/or travel expenses.
9. Telephone requests for adjournment are not entertained. A request for adjournment must, if at all possible, be in the form of a joint letter from the attorneys for all the parties, and must, if at all possible, suggest two alternative dates when the attorneys and their clients will be available. In any event, a request for adjournment is inoperative unless it mentions the position of each party with respect to the requested adjournment.
10. If the case is settled prior to a scheduled conference, an adjournment of up to two weeks will be granted on written request solely for the purpose of submitting a stipulation of dismissal to be "so ordered" by the district judge.