

**STANDING ORDER FOR ALL CASES REFERRED FOR SETTLEMENT
TO MAGISTRATE JUDGE JENNIFER E. WILLIS**

Chambers

40 Foley Square, Room 425
United States Courthouse
New York, NY 10007
Telephone: (212) 805-0244
WillisNYSDChambers@nysd.uscourts.gov

Courtroom

40 Foley Square, Room 228
United States Courthouse
New York, NY 10007

Introduction

The Court believes the parties should fully explore settlement at the earliest practical opportunity. Early consideration of settlement allows the parties to avoid the substantial cost, expenditure of time, and uncertainty that are typically a part of the litigation process. Even for those cases that cannot be resolved, early consideration of settlement can provide the parties with a better understanding of 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. It also requires the earnest consideration of the other side's point of view, as the quote above suggests. Set forth below are the procedures the Court will require the parties and counsel to follow and the procedures the Court typically will employ in conducting the conference.

1. **Confidential Nature of Conference.** All settlement conferences are “off the record.” All communications relating to settlement are strictly confidential and may not be used for any purpose. They are not to be used in discovery and will not be admissible at trial.
2. **Magistrate Judge's Role.** The magistrate judge functions as a mediator, attempting to help the parties reach a settlement. Efficient use of this process requires that counsel and their clients be (a) prepared for the conference, and (b) candid with the mediator.
3. **Ex Parte Settlement Letter.** Unless otherwise ordered by the Court, no later than **no later than seven days before the pre-conference telephone call**, counsel for each Party must send the Court by email a letter, marked “Confidential Material for Use Only at Settlement Conference,” which should not be sent to the other parties. The letter should be sent to WillisNYSDChambers@nysd.uscourts.gov. This *ex parte* letter must not exceed three pages, unless permission to do so has been granted by the Court.

A courtesy copy of the settlement letter shall be submitted to the Court no later than one business day after submission of the letter if the exhibits to the letter exceed ten pages. The courtesy copy should be placed in well-organized three- ring binder(s). Where appropriate, the binder(s) shall be separated by tab dividers preceded by an exhibit list.

If a Party is submitting a video, the clip shall be provided on a thumb drive delivered to Chambers and labeled with a case name and docket number. Alternatively, the clip may be emailed to Chambers.

The letter should include, at a minimum, the following: (a) the history of settlement negotiations, if any, including any prior offers or demands; (b) your evaluation of the settlement value of the case and the rationale for it; (c) any case law authority in support of your settlement position; and (d) any other facts that would be helpful to the Court in preparation for the conference. The reason the letter is to be submitted ex parte is to ensure that counsel are candid with the Court as to the strengths and weaknesses of their case, and to provide a realistic assessment of the litigation risks each Party faces were the case to be resolved on the merits.

If the plaintiff has not already made a settlement demand, such a demand shall be communicated to the opposing Party no later than 10 days prior to the conference. If it has not already done so, the opposing Party shall respond to any demand no later than three days before the pre-conference telephone call. Even if plaintiff has made a demand as part of a court-ordered or private mediation previously attended by the parties, plaintiff is still required to make (or renew) a demand. The parties should not wait for the settlement conference to commence negotiations of a resolution of their dispute.

4. Acknowledgment Form. Counsel shall complete the Acknowledgment Form that appears following this Standing Order. This Form must be submitted at the same time as the Ex Parte Settlement Letter by email to WillisNYSdChambers@nysd.uscourts.gov as a PDF attachment with a copy simultaneously emailed to all counsel of record who will be participating in the settlement conference. To be crystal clear, the Court expects a Party to send the Ex Parte Settlement Letter in one email just to the Court, and to send a separate email to the Court, copying all other counsel, with the Acknowledgment Form.
5. Jointly Submitted Settlement Conference Form. Counsel for both Parties shall jointly submit the attached settlement conference form.
6. Pre-conference Phone Call. The Court will schedule a pre-conference phone call between the Court and Counsel for the Parties approximately a week before the settlement conference. The call is off the record. The Parties themselves should not attend the call. The purpose of the call is to determine

whether it is in the Parties' interests to invest the significant time and effort that a settlement conference requires.

7. Attendance of Parties Required. The parties — not just the attorneys — must attend the settlement conference in person. A Party's attendance is essential to the settlement process. It is vital that parties hear the other side's presentation and have the opportunity to speak with the mediator outside the presence of any adversary. **The Parties should be prepared for the settlement conference to last all day.** There is a cafeteria in the building.

If a Party resides more than 100 miles from the Courthouse and it would be a great hardship for the Party to attend in person, upon written application in advance of the conference in the form of a letter-motion to be filed on ECF, I will sometimes excuse that Party's presence but I will require that Party to be available by telephone throughout the settlement conference. Each Party must supply its own simultaneous interpreter (who need not have any special certification), if required. The Court does not provide interpreters for settlement conferences.

When a corporate Party or labor union is a Party, counsel of record must be accompanied by the person with decision-making authority who gives directions to counsel of record (not someone who has received settlement authority from someone else). Where liability insurance is involved, a decision-making representative of each insurance carrier must attend in addition to the insured. This includes each excess carrier unless specifically excused by the Court at least one week before the conference. Because it is important that the decision-makers with respect to settlement hear their adversaries' presentations and be available to answer questions from the Court, the person who attends must be the person with responsibility for determining the amount of any ultimate settlement and who has not had limitations placed by another person with respect to his or her authority to settle. That is, corporate parties, labor unions, and insurance companies (or any other Party that is not a natural person) must send to the conference the person ultimately responsible for giving settlement authority, not someone who has received authority from someone else.

When any government agency is a Party, counsel of record must be accompanied by a knowledgeable representative from the agency (or, if the agency official with knowledge is more than 100 miles from the Courthouse, the official must be available to participate by telephone). In addition, in cases where the Comptroller of the City of New York has authority over settlement, the Assistant Corporation Counsel must make arrangements in advance of the conference for a representative of the Comptroller either to attend the conference or to be available by telephone for the duration of the conference to approve any proposed settlement.

8. Consequences of Non-Compliance with Attendance Requirements. If a Party fails to come to the settlement conference with all the required persons (attorney, plus a decision-making employee from the client, plus a decision-making representative from each insurance carrier), that Party may be required to reimburse all the other parties for their time and travel expenses, and may face other sanctions.
9. Conference Procedures. Unless advised otherwise by the Court, the conference will take place in Courtroom 228 at 40 Foley Square. At the outset of the mediation, each attorney should be prepared to make a brief presentation in the presence of each other and the parties, summarizing not merely a Party's positions, but the Party's interests as well. Written remarks read aloud are usually ineffective. Counsel are also reminded not to treat their opening remarks as if they were the equivalent of a jury address. While there is no formula for the most effective presentation, counsel should consider addressing (a) the most important issues of fact and law, (b) the most recent offer or demand communicated to opposing counsel, and (c) any other matters that may help to advance settlement. The merits of the case are obviously relevant to the value of a potential settlement, but settlement conferences are not the place to make legal arguments. Discussion, if any, of legal issues should be offered solely in the context of settlement, not litigation. Counsel should gear their presentation to the opposing Party, not the Court.

After the initial "joint session," in most mediations, the Court will spend the rest of the time meeting separately with each side. In these private meetings, the parties and their counsel should be prepared to discuss their position on settlement, the reasons for their position, the amount of attorneys' fees and litigation expenses incurred to date, and an estimate of the remaining cost of litigating the case to judgment, including any appeal.

10. Adjournments of Settlement Conferences. A Party may make a written application by letter-motion filed on ECF consistent with Rule I.C. of the Court's Individual Practices to adjourn or advance the date of the settlement conference without providing cause if the application for a change in date is made at least one week prior to the scheduled conference date. Otherwise, counsel should set forth the reasons for seeking the change in date and must make the application by letter-motion as soon as counsel becomes aware of the need of or potential need for the change. In addition, the parties are required to seek a change in the date if (a) an adjournment would permit necessary discovery or exchange of information that would make the conference more fruitful, or (b) a client who would otherwise be permitted to participate by telephone would be available to attend the conference were it held on another date. Requests for an adjournment on the eve of the scheduled settlement conference are strongly disfavored and not likely to be granted. In no circumstances will a telephone request for an adjournment be entertained.

To seek a change in date, the Party should first consult with all other counsel

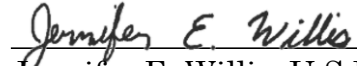
as to their and their clients' (and insurers' if applicable) availability on at least three dates. The Party must then file forthwith on ECF, as a letter-motion, a request to adjourn the settlement conference to the agreed-upon date and time.

The conference date will not be deemed changed until Chambers receives the letter-motion and it is approved by the Court.

11. Settlement in Advance of Mediation. If all parties advise the Court in writing that the case has settled prior to the scheduled conference, I will ordinarily adjourn the conference sine die. In these circumstances, the parties should file a letter-motion on ECF requesting an adjournment of the settlement conference sine die, and the Court will then issue a text-only order.
12. No Effect on Other Deadlines. The scheduling of a settlement conference has no effect on any deadlines or other pending obligations in the case.

SO ORDERED.

Dated: New York, New York
May 8, 2024


Jennifer E. Willis, U.S.M.J.

ACKNOWLEDGMENT FORM

Complete and send this form by email as a PDF attachment to (1) Judge Willis at WillisNYSChambers@nysd.uscourts.gov and (2) to all other attorneys who will be attending the conference no later than three days before the pre-conference telephone call. Your signature indicates your compliance with the certifications below.

Case Name: _____

Docket Number: _____ CV _____ (_____) (JW)

I acknowledge that my client and I must attend a settlement conference on _____, 20____ at _____ m. in Courtroom 228, United States Courthouse, 40 Foley Square, New York, New York.

1. I am attorney for _____ [Plaintiff / Defendant].
 - a. (For corporate or other non-individual clients): The name of my client's representative who will attend the conference is: _____.
The representative's title is: _____.
 - b. If applicable (for insurance carrier): The name of the representative of the insurance carrier who will attend the conference is: _____.
2. Check one line below:
 - a. ____ The above-named individual will attend in person.
 - b. ____ The above-named individual will attend by telephone because I certify that (1) such individual lives and works more than 100 miles from the Courthouse (or, if my client is not an individual, the client's decision-maker lives and works more than 100 miles from the Courthouse), and (2) it would be a great hardship for this individual to attend a settlement conference on this or any other date. This individual understands that he or she must participate by telephone without interruption for the duration of the conference.
3. I certify that the person attending the conference (in person or by telephone) is the person with ultimate responsibility for determining the settlement amount: that is, the person responsible for giving settlement authority, not someone who has received authority from another person. In addition, if there is an insurance carrier with authority over settlement, a representative from such carrier with complete responsibility over settlement will be present in person or by telephone.
4. I certify that the parties have made a settlement demand and counteroffer.
5. I certify that I read both the Court's Order scheduling this conference as well as the "Standing Order for All Cases Referred for Settlement to Magistrate Judge Willis."

Dated: _____
[signature of attorney]

SETTLEMENT CONFERENCE FORM

This form should be completed jointly by the Parties and emailed to WillisNYSDChambers@nysd.uscourts.gov no later than three days before the pre-conference telephone call. The answers to this form **will be kept confidential and fall within Rule 408 of the Federal Rules of Evidence**. Please cite to the relevant docket entry where appropriate.

1. Has a deadline for fact discovery been set in this case?

Yes_____ No_____

If yes, the discovery deadline is/was_____

If so, is discovery closed?

Yes_____ No_____

If yes, the discovery deadline is/was_____

Does either Party intend to seek to reopen discovery?

Yes_____ No_____

2. Is there a deadline for expert discovery?

Yes_____ No_____

If yes, the expert discovery deadline is/was_____

3. Is either Party waiting to receive records (medical records, payroll records, expert reports, etc.) important to its case?

Yes_____ No_____

If yes, what are those records?_____

Is the Party still prepared to settle even without receipt of those documents?

4. Has a Motion to Dismiss or Motion on the Pleadings Been Filed?

Yes_____ No_____

If yes, did the District Judge rule on the Motion to Dismiss?

Yes_____ No_____

If yes, please list the surviving claims below:

5. Has a Motion for Summary Judgment Been Filed?

Yes_____ No_____

If yes, did the District Judge rule on the Motion?

Yes_____ No_____

If yes, what did the District Judge rule?

Granted_____ Denied_____ Granted in part _____

6. Are attorney's fees part of the damages calculation? If so, to date, what are the total attorney fees accumulated in the case?

Yes_____ No_____

If yes, \$_____

7. Is this a fee-shifting case, if so, please identify the relevant statute.

Yes_____ No_____

If yes, the relevant statute is:_____

8. What are the estimated attorney fees for each side for the next stages of the litigation?

Plaintiff \$_____ Prefer Not to answer_____

Defendant \$_____ Prefer Not to answer_____

9. Are there any financial constraints affecting the settlement discussions the Court should be aware of?

Yes_____ No_____

If yes, what are those financial constraints? _____

10. What was Plaintiff's last best offer? When was this offer made?

\$_____

Date of Offer:_____

11.What was Defendant's last best offer? When was this offer made?

\$_____

Date of Offer:_____

12. If this case were to go to trial, do the Parties anticipate it will be a bench trial or a jury trial?

Bench Trial_____

Jury Trial_____

13. Does either Party intend to raise an inability to pay defense?

Plaintiff/Cross Defendant

Yes_____ No_____

Defendant/Cross Plaintiff

Yes_____ No_____

If so, have the Parties shared any financial documents demonstrating an inability to pay?

Yes_____ No_____

14. Are there any other impediments to settlement that the Court should be aware of?

Yes_____ No_____

If yes, please describe._____