

SETTLEMENT CONFERENCE PROCEDURES

MAGISTRATE JUDGE SANKET J. BULSARA

Rule 1 of the Federal Rules of Civil Procedure requires that disputes be resolved in a manner that is just, speedy and inexpensive. As such, the Court has an obligation to vigorously explore efforts to reduce litigation costs through settlement. *See In re Tobacco Litig.*, 192 F.R.D. 90, 95 (E.D.N.Y. 2000) (describing court's duty to take affirmative action assisting the parties in all possible settlement options).

The financial and incidental costs, risks, delays, distraction and anguish associated with litigation often makes settlement a preferable choice for litigants. Even for those cases that cannot be resolved through settlement, early consideration of settlement can allow the parties to better understand the factual and legal nature of their dispute and streamline the issues to be litigated. Therefore, counsel and pro se parties should be prepared and authorized to discuss settlement at every court appearance.

Judge Bulsara will conduct his settlement conferences in accordance with the following rules and procedures:

1. Pre-Conference Exchange of a Demand and an Offer. A settlement conference is more likely to be productive if, before the conference, the parties exchange written settlement proposals. Accordingly, at least fourteen (14) days prior to the settlement conference, plaintiff's counsel shall submit a written itemization of damages and settlement demand to defendant's counsel with a brief explanation of why such a settlement is appropriate. No later than seven (7) days prior to the settlement conference, defendant's counsel shall submit a written offer to plaintiff's counsel with a brief explanation of why such a settlement is appropriate.

2. Settlement Statements. At least three days before the settlement conference, each party shall provide the Court with a 2-3 page *ex parte* settlement position statement. These statements must specify the terms on which the party is willing to settle the case, whether those terms are negotiable, and an explanation of that position. To the extent the parties wish the Court to be aware of particular legal arguments in support of their settlement position, they should provide citations to relevant authorities. The settlement position statement must have attached to it the party's communicated demand or offer, as prescribed above. As these *ex parte* statements will be treated as confidential and will not be docketed, they should include a realistic statement of the party's settlement position. The statements may be e-mailed to Bulsara_Chambers@NYED.USCOURTS.GOV

3. Mandatory Attendance of Parties. Parties are required to personally attend the conference even if represented by counsel. In the case of a corporate party, the individual attending the conference should be a corporate employee with *full authority to settle the matter*. In the case of a Government or municipal entity requiring the approval of a body, such as a board, legislature or agency, the individual attending the conference must be *fully authorized* to approve and submit a recommendation to that governing body or to contact in real time the person authorized to make such a

recommendation. An insured party shall appear with a representative of the insurer(s) authorized to negotiate, and who has *full authority to settle the matter*.

Having a client with authority available by telephone is *not* an acceptable alternative, except under the most extenuating circumstances, which does not include ordinary travel expenses and inconvenience. Because the Court generally sets aside significant time 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. In that regard, and because the Court and the parties invest significant resources in these conferences, *the failure of either a party and/or counsel to appear in person may result in sanctions*, including payment of fees and costs of other parties who do attend the conference. If such exceptional extenuating circumstances exist, parties must file a letter motion on ECF no later than 72 hours prior to the settlement conference seeking to adjourn the conference. Any other party may respond to such a motion no later than 48 hours prior to the conference.

4. Mandatory Attendance of Counsel. All lawyers who have appeared in the case (and have not been recused as counsel) must be present at a settlement conference, absent a request in the pre-conference *ex parte* settlement statement to excuse a particular lawyer's presence.

5. Statements Inadmissible. The Court expects the parties to address each other with courtesy and respect. Parties are encouraged to be frank and open in their discussions. Consistent with the Federal Rules, statements made by any party during the settlement conference are generally inadmissible at trial.