

**PROCEDURES FOR ALL CASES REFERRED FOR SETTLEMENT
TO MAGISTRATE JUDGE HENRY J. RICARDO**

Chambers

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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. 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 7 days before the conference, 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 emailed to Chambers at RicardoNYSDCambers@nysd.uscourts.gov. This ex parte letter must not exceed six (6) pages, unless permission to do so has been granted by the Court. If a letter is accompanied by attachments and

thus exceeds 6 pages in length, the submitting party shall hand deliver or overnight mail a hard copy of the letter plus attachments to the Court.

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 defendant is a business entity that intends to argue that it lacks the ability to pay any significant settlement, it should provide supporting documentation.

If the plaintiff has not already made a settlement demand, such a demand shall be communicated to the opposing party no later than 14 days prior to the conference. If it has not already done so, the opposing party shall respond to any demand no later than 7 days thereafter. 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 a new demand 14 days prior to the conference, and defendant must respond within 7 days. 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 these Procedures. This Form must be submitted at the same time as the Ex Parte Settlement Letter by email to RicardoNYSChambers@nysd.uscourts.gov as a PDF attachment, copying 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. Attendance of Parties Required. The parties—not just the attorneys—must attend in person. A party’s attendance is essential to the settlement process. It is vital that parties have the opportunity to speak with the mediator outside the presence of any adversary. 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 at least 7 days 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 7 days before the conference. Because it is important that the decision-makers with respect to settlement 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.

6. 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.

7. Pre-Conference Ex Parte Call. After receiving each party's Ex Parte Settlement Letter and Acknowledgment Form, but before the settlement conference, the Court will hold an ex parte call with counsel for each party. Counsel should indicate their availability for such a call in the days between the submission of their settlement materials and the settlement conference when they submit the settlement materials to the Court by email.
8. Conference Procedures. Unless advised otherwise by the Court, the conference will take place Courtroom 21D at 500 Pearl Street. Should the parties wish to have a remote settlement conference, a written application with the consent of all parties must be made to the Court no later than 7 days in advance of the settlement conference.

The Court will spend the the conference 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.

The Court encourages all parties to keep an open mind in order to re-assess their previous positions and to discover creative means for resolving the dispute.

9. Adjournments of Settlement Conferences. A party may make a written application by letter-motion filed on ECF to adjourn or advance the date of the settlement conference without providing cause as long as the application for a change in date is made at least 14 days 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. Counsel should thereupon contact Chambers by email to determine whether the Court is available for a settlement conference on any of those dates. The party must then file on ECF a letter-motion 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.

10. 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.
11. No Effect on Other Deadlines. The scheduling of a settlement conference has no effect on any deadlines or other pending obligations in the case.

ACKNOWLEDGEMENT FORM

Complete this form, sign and date it, and send it by email as a PDF attachment to (1) Judge Ricardo at RicardoNYSChambers@nysd.uscourts.gov and (2) to all other attorneys who will be attending the conference no later than 7 calendar days prior to the conference. Please read the certifications below carefully as your signature indicates your compliance with them.

Name of Case: _____

Docket Number: ____ CV _____ (____) (HJR)

I acknowledge that my client and I must attend a settlement conference on _____, 20__ at ____:____ .m. in Courtroom 21D, United States Courthouse, 500 Pearl Street, New York, New York.

1. I am attorney for _____ [Plaintiff / Defendant]

(For corporate or other non-individual clients): The name of the representative of my client who will attend the conference is:_____. The title of this representative is:_____.

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 remote means 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 remote means without interruption for the duration of the conference.
- c. ____ The above-named individual will attend by remote means because the Court has approved the parties’ joint written application to hold the settlement conference remotely.

3. I certify that the person attending the conference (in person or by remote means) 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 I have read both the Court's Order scheduling this conference as well as the "Procedures for All Cases Referred for Settlement to Magistrate Judge Ricardo."

Dated: _____

[signature of attorney]