

## PROCEDURES APPLICABLE TO CASES REFERRED FOR SETTLEMENT TO MAGISTRATE JUDGE KEVIN NATHANIEL FOX

1. **No later than three (3) business days before the settlement conference**, each party must provide Judge Fox: (1) a pre-conference letter; and (2) a completed attendance acknowledgment form (see Page 3). Both submissions should be sent via email to Elizabeth Potter at [elizabeth\\_potter@nysd.uscourts.gov](mailto:elizabeth_potter@nysd.uscourts.gov) during regular business hours, 9:00A.M. - 5:00P.M. Parties proceeding pro se need not submit the attendance form and, if they are unable to send a pre-conference letter electronically, they may mail it to Judge Fox at 40 Centre Street, Room 425, New York, NY 10007.
2. The pre-conference letter should be no longer than five pages and marked prominently “CONFIDENTIAL MATERIAL FOR USE AT SETTLEMENT CONFERENCE.” The letter need not be provided to any other party. The letter should state succinctly: (1) the history of settlement negotiations; (2) the party’s evaluation of the 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 Judge Fox in preparation for the conference.
3. **Parties – not just their counsel – must attend the settlement conference.** Corporate parties or labor unions must send a person with decision-making authority. Where liability insurance is involved, a knowledgeable representative of the carrier should attend, in addition to the insured.
4. If a party fails to attend the settlement conference with all the required persons, **that party may be required to reimburse all other parties for their time and expenses associated specifically with attending the conference.** Judge Fox only holds one settlement conference, so it is imperative that all parties come prepared on their scheduled date.
5. Parties participating via telephone must be on the telephone for the duration of the conference. A party participating via telephone should call (888) 557-8511 and use access code 4862532.
6. At the settlement conference, all parties will be permitted to make a brief presentation summarizing: (1) the issues of fact and law which they regard as dispositive; (2) the most recent offer or demand communicated to the adversary party; and (3) any other matters they regard as material to settlement. Although the merits of the case are relevant to settlement value, the parties are reminded that settlement conferences are not adjudicatory in nature.

7. After all parties have made their brief presentations, Judge Fox will meet separately with each party. In these meetings, the parties and counsel should be prepared to discuss the bases for their stated position, the amount of attorney's fees and litigation expenses incurred to date, if any, and an estimate of the cost of litigating the case to judgment.
8. All settlement conferences are "off the record" and all communications made to Judge Fox in connection with the conference are confidential.
9. A request for adjournment of the settlement conference must be in the form of a joint letter from all the parties, and should suggest alternative dates when the parties are available.
10. If the parties settle their dispute prior to the conference, or if it becomes apparent to the parties that no utility exists in attending the conference, given each party's respective position, the parties must notify Judge Fox, in writing, immediately.

Revised: March 12, 2020

**ATTENDANCE ACKNOWLEDGMENT FORM**

**CASE NAME:** \_\_\_\_\_

**DOCKET NUMBER:** \_\_\_\_\_

I acknowledge that I am attending a telephonic settlement conference on \_\_\_\_\_ at \_\_\_\_\_ o'clock.

Please provide the name of any co-counsel who will attend the conference with you:

\_\_\_\_\_  
\_\_\_\_\_

I acknowledge that my client will attend the settlement conference.

Please provide the name and title, if applicable, of the client(s) who will attend:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME (PRINT)