

**SETTLEMENT CONFERENCE PROCEDURES
FOR MAGISTRATE JUDGE STEWART D. AARON**

Chambers

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Courtroom

500 Pearl Street, Room 11C
New York, NY 10007

The Court believes the parties should fully explore settlement at the earliest practical opportunity. Early settlement allows the parties to avoid the substantial cost, expenditure of time and uncertainty that typically are 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.

In most cases, the Court will require the parties to participate in a settlement conference. Even where a settlement conference has not been ordered by the Court, the parties may voluntarily request the Court to hold a settlement conference in an attempt to resolve or narrow the dispute.

The following are the procedures applicable to settlement conferences before Judge Aaron:

1. **Conference Location.** Unless otherwise advised by the Court, the conference will take place in Judge Aaron's Courtroom (Courtroom 11C) at 500 Pearl Street, New York, NY.
2. **Confidentiality.** All settlement conferences are "off the record." All communications relating to settlement are strictly confidential and may not be used for any purpose other than settlement. They are not to be used in discovery and will not be admissible at trial.
3. **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 prepared for the conference, candid with the mediator and genuinely committed to finding a resolution.
4. **Ex Parte Pre-Conference Submissions.** No later than 7 days before the conference, counsel for each party must send the Court (a) a pre-settlement conference letter, and (b) a completed attendance certification form attached at the

end of these procedures. The letter and certification should be emailed to Aaron_NYSDChambers@nysd.uscourts.gov.¹ Parties proceeding *pro se* need not submit the certification, but must provide a pre-conference letter, which, if not emailed or hand delivered, may be mailed to Chambers at the address sufficiently in advance so that it arrives at the Court no later than five days before the conference.

The letter should be marked “Confidential Material for Use Only at Settlement Conference” and should not be provided to opposing parties. The reason the letter is not to be shared with other parties is to ensure that counsel is candid with the Court as to the strengths and weaknesses of their client’s case and as to the nature and range of an acceptable settlement.

The letter must not exceed 5 pages (single-spaced), unless permission has been granted by the Court. The letter should include, at a minimum, the following: (a) a concise statement of the issue(s) in dispute; (b) case law authority relevant to settlement discussions; (c) the history of settlement negotiations; (d) counsel’s evaluation of the settlement value of the case and the rationale for it; (e) identification of the strengths and weaknesses of each side’s case, to the extent not already included; and (f) any other information that would be helpful to the Court in preparing for the conference. Parties may attach exhibits to their letters to the extent they believe the exhibits would aid settlement discussions. If exhibits to a letter exceed 10 pages, a courtesy copy of the entire submission must be submitted to the Court via hand or overnight delivery.

5. **Attorneys’ Fees and Expenses.** During the settlement conference, the parties and their counsel must be prepared to inform the Court of the amount of attorneys’ fees and expenses incurred to date, and an estimate of the remaining costs (including attorneys’ fees) of litigating the case to judgment, including any appeal.
6. **Exchange of Demand/Offer.** 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. The parties should not wait for the settlement conference to commence negotiations of a resolution of their dispute.
7. **Pre-Conference Telephone Call.** The Court may schedule a telephone call with the parties (either separately or together) prior to the conference to discuss

¹ If a party cannot send the letter and certification by e-mail, the party may hand-deliver them to the Court, or send them by overnight delivery, so long as they arrive no later than 5 business days before the conference.

issues pertinent to the conference.

8. **Attendance of Parties Required.** The parties — not just their 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 Magistrate Judge 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 that party to attend in person, counsel may write to the Court seeking permission for the party to participate by telephone. This issue should be raised with the Court in writing as soon as possible. Incarcerated parties may also participate in the conference by telephone.

If an interpreter is needed for any party, each party must supply its own simultaneous interpreter (who need not have any special certification). The Court does not provide interpreters for settlement conferences.

Corporations, Labor Unions and Insurers. Corporate parties or labor unions must send the person with complete decision-making authority to settle. Where liability insurance is involved, a decision-making representative of each 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. **In short, 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 approving any settlement; that is, the person with authority to settle without having to obtain the approval of any other person.**

Government Agencies. Where 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 to approve any proposed settlement.

9. **Consequences of Non-Compliance with Attendance Requirements.** If a party fails to comply with the attendance requirements, that party may be required

to reimburse all the other parties for their time and travel expenses and may face other sanctions.

10. **No Effect on other Deadlines.** The scheduling of a settlement conference has no effect on any deadlines or other pending obligations in the case.
11. **FLSA Settlements.** The Court will not approve a Fair Labor Standards Act (“FLSA”) settlement without an explanation from counsel as to why the terms of the proposed settlement are fair and reasonable. Such explanation may be provided immediately following a settlement conference that results in agreement between the parties. Alternatively, the parties seeking judicial approval of an FLSA settlement shall submit a letter to the Court (a) explaining why the terms of the proposed settlement reflect a reasonable compromise of disputed issues, rather than a mere waiver of statutory rights, and (b) presenting the Court with sufficient evidence to determine whether the settlement terms represent a fair and reasonable resolution of the dispute.

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