

Judicial Settlement Conference Requirements

****THESE REQUIREMENTS ARE SUBJECT TO MODIFICATION BY THE JSO****

1. Good Faith Attempt to Settle.

The parties agree and consent that all disputes between them will be addressed as part of the settlement conference. Each party shall make a good faith attempt to negotiate a global settlement of the disputes arising among the parties involved in the settlement conference.

2. Conduct of Settlement Conference: Role of a Bankruptcy Judge as Settlement Facilitator.

The bankruptcy judge who agrees to serve as a judicial settlement officer (the "JSO") is not the Presiding Judge. While the JSO is acting in his/her official capacity as a Bankruptcy Judge while assisting the parties, he/she will have no involvement whatsoever in deciding any issue in the bankruptcy case or adversary proceeding addressed in the settlement conference. The JSO's role is to facilitate the settlement discussions among the parties in an attempt to assist the parties in reaching a global settlement of their disputes and, if this is not possible, to assist in narrowing the issues for hearing before the Presiding Judge. In most cases, after a general meeting with all parties and counsel, the JSO will use multiple conference rooms to enable separate meetings with the parties and their counsel. The settlement conference will be conducted in confidence, and no transcript, audio or video recording, or formal record will be made. After a settlement is reached, the JSO may move the parties into one room to announce the general terms of the settlement and obtain acknowledgment that all attorneys and parties agree that the terms, as announced, are accurate and that the oral agreement is enforceable. This session may be recorded and retained by the JSO until the final written settlement agreement is filed with the court. By agreeing to appear at the settlement conference, the parties consent to have the terms of the settlement conference recorded.

Only the JSO as settlement facilitator, the JSO's staff, the parties, and the parties' representatives and advisors will be permitted to be present during the settlement conference. While the JSO typically conducts a settlement conference in the same manner as a mediation, the settlement conference differs from a traditional mediation in that the JSO, as facilitator, may provide his/her personal views on the claims and positions of the parties. Any settlement agreement reached as a result of the settlement conference will be a consensual agreement entered into by the parties voluntarily. You are responsible for the final, negotiated settlement, if any.

3. Pre-Settlement Conference Demand and Offer.

The settlement conference is more likely to be productive if the parties exchange written settlement proposals prior to the conference. Accordingly, at least ten (10) days prior to the pre-settlement conference, counsel for the plaintiff/movant shall submit to counsel for the defendant(s)/respondent(s) a written settlement demand, including an itemization of

damages (if appropriate) and a brief explanation as to why such a settlement is appropriate. No later than seven (7) days prior to the pre-settlement conference, counsel for each of the defendants/respondent(s) shall submit to counsel for the plaintiff/movant or other opposing parties a written settlement offer with a brief explanation as to why such a settlement is appropriate. If there are more than two parties, each party shall deliver a settlement demand or offer as appropriate under the circumstances.

4. Pre-Settlement Conference Meeting.

The JSO finds that a brief pre-settlement conference attended solely by counsel is productive and expedites the conference at the outset. The conference should be set for no later than three (3) working days prior to the settlement conference.

5. Attendance of Parties Required.

The settlement conference may be held in person, by Zoom, or a combination to be determined during the Pre-Settlement Conference by the JSO and counsel (in consultation with the parties). Each party shall attend the settlement conference as stated in Paragraph 1 or through a duly authorized representative with complete authority to negotiate and execute a settlement agreement at such person's discretion.

THE JSO DOES NOT ALLOW ANY PERSON TO APPEAR BY TELEPHONE EXCEPT IN EXTRAORDINARY CIRCUMSTANCES, EVEN IF TELEPHONE PARTICIPATION IS APPROVED BY THE PRESIDING JUDGE.

If the party is an individual, that person must attend the settlement conference.

If the party is a corporate, government, or other organizational entity, the party must have a person attend, and the person must be fully authorized to negotiate and execute a settlement agreement on the party's behalf.

Without limiting the foregoing, if a party is a defendant/respondent, the party's representative must have final settlement authority to commit the organization to pay, in the representative's own discretion, a settlement amount up to the plaintiff/movant's prayer, or up to the plaintiff/movant's last demand, whichever is lower. Without limiting the foregoing, if a party is a plaintiff/movant, the party's representative must have final authority, in the representative's own discretion, to authorize dismissal of the matter with prejudice or to accept a settlement amount down to the defendant/respondent's last offer.

If a party to the settlement conference is a public entity, including a federal agency or an entity required to conduct its business pursuant to Chapter 286, Florida Statutes, that party shall be deemed to appear at the settlement conference by the presence of a representative, with full authority to settle on behalf of the entity.

Any insurance company that is a party or that is contractually required to defend or to pay damages (if any) assessed within its policy limits in the matter to be addressed during the settlement conference must be present through a duly authorized representative, appearing, with final settlement authority to commit the company to pay, in the

representative's own discretion, an amount within the policy limits, or up to the plaintiff's last demand, whichever is lower. The parties and their counsel are responsible for timely advising any involved non-party insurance company of the requirements of this notice.

The purpose of these requirements is to have in attendance a representative for each party who has the authority to exercise his or her own discretion, and the realistic freedom to exercise such discretion without negative consequences, in order to reach a settlement during the conference without consulting someone else who is not present. Having a party with authority available by telephone is not an acceptable alternative as it is impossible for a party who is not present to appreciate the negotiation process and the reasons that may justify a change in one's perspective toward settlement. In the event counsel for any party is aware of any circumstance which might cast doubt on a client's compliance with these requirements, said counsel shall immediately discuss the circumstance with opposing counsel to resolve the issue well before the settlement conference. If such discussion does not resolve the issue, counsel may request a teleconference with the JSO and all parties and counsel of record involved in the settlement conference.

If any required person described above fails to attend the settlement conference, the settlement conference will be canceled or rescheduled. **The JSO will promptly report such facts (including the identity of the person or persons) to the Presiding Judge. The Presiding Judge may assess costs and expenses and additional sanctions against any non-complying party, attorney, or both.**

6. Confidentiality.

Consistent with Federal Rule of Evidence 408, the content of and the discussions occurring during the settlement conference are to be kept confidential. All persons involved in the settlement conference will keep confidential and not use for any collateral or ulterior purpose:

- a.** any views expressed or suggestions or proposals for settlement made by a party in the course of the settlement conference;
- b.** any views expressed or suggestions or proposals for settlement made by the JSO in the course of the settlement conference;
- c.** the fact that a party had or had not been willing to accept a proposal for settlement made during the settlement conference; and
- d.** all information (whether oral or in writing) produced for or arising in relation to the settlement conference, unless such information is otherwise discoverable under applicable rules of evidence.

All attorney work product relating to the settlement conference (including anything stored electronically) and any other information produced for, or arising in relation to, the settlement conference shall be privileged and shall not be admissible as evidence or discoverable in any legal proceedings except (i) as directly necessary to implement and enforce any settlement agreement resulting from the settlement conference, and (ii) as provided in this

notice.

All documents used or created in the settlement conference (the "Settlement Conference Documents") are not to be used by any party or their respective representatives in any legal proceedings save for such documents that are/were in the possession or custody of such party prior to the settlement conference or are obtained by such party legitimately other than through the settlement conference process. In respect of the Settlement Conference Documents, any existing restrictions on the use of such documents and/or any prevailing law, rule, or court order applicable to such documents, are to remain in effect. The settlement conference is not to be taken as waiving or in any way affecting any such restriction, law, rule, or court order unless expressly agreed to in writing by the relevant party or parties.

Written materials submitted to the JSO and the JSO's notes will be destroyed after the conclusion of the settlement conference.

The parties are encouraged to consult with counsel regarding the foregoing agreements relating to confidentiality and admissibility. The JSO does not provide legal advice to the parties and makes no representation regarding the enforceability of the provisions of this notice among the parties.

7. Potential Questions to be Addressed During Settlement Conference.

The parties should review the following questions well prior to the settlement conference and be prepared to discuss each topic at the settlement conference. This is not intended to be an exhaustive list of potential topics for discussion.

- a. What are your objectives in litigation?
- b. What issues need to be resolved, whether or not before the Presiding Judge?
- c. What legal arguments support your position? What case law can you cite to support your argument?
- d. Do you understand the opposing party's view of the case? Do you dispute their factual assertions? What are their legal arguments? What cases support their position?
- e. What remedies are available through litigation or otherwise?
- f. Is there the possibility for a creative resolution of the dispute, not otherwise available through decision by the Presiding Judge?
- g. Do you have adequate information to discuss settlement? If not, how will you obtain sufficient information to make a meaningful settlement discussion possible?
- h. Are there outstanding liens? Do we need to include a representative of the lienholder?
- i. What are the alleged damages, and how were they calculated?

j. Is any party seeking relief other than monetary damages?

k. Are there collectability issues in this matter?

8. Involvement of Clients.

For many clients, this will be the first time they participate in a court-supervised settlement conference. Therefore, counsel shall provide a copy of this notice to each client and client representative and shall discuss the issues addressed herein with their clients prior to the settlement conference.

9. Settlement Agreement.

The JSO may require the parties to circulate and bring to the settlement conference a draft form of the settlement agreement, with blanks or placeholders for the material terms in dispute to be resolved at the settlement conference.

The parties agree to abide by any settlement and to effect the terms thereof reached through the settlement conference. Any settlement agreement entered into as a result of the settlement conference may be subject to review and approval by the Presiding Judge.

10. Reporting by the JSO

The JSO will report to the Presiding Judge, orally or in writing, only

a. that the parties did or did not reach settlement and the general extent of the settlement if one was reached,

b. if and how a settlement may be presented to the Presiding Judge (for example, by motion under Bankruptcy Rule 9019), and

c. any facts relevant to a party's failure to comply with the requirements of paragraphs 5 and 6 above.

11. Waiver of Claims.

The parties agree for the benefit of themselves and the JSO as settlement facilitator that:

a. The parties shall not make any claim whatsoever against the JSO or his staff for any matter in connection with or in relation to the settlement conference, the assistance provided by the JSO, or the disputes between the parties; and

b. the JSO and his staff will not be liable to the parties for any act or omission in connection with his assistance provided as settlement facilitator.

12. Termination by the JSO as Settlement Facilitator.

If any party does not agree to all provisions of this notice, such party shall advise the JSO prior to the commencement of the settlement conference in writing, and the JSO will withdraw as proposed settlement facilitator in this matter. **By attending the settlement conference,**

each party and each party's representatives, agents, and advisers agree to be bound by all terms of this notice as if this notice were an agreement signed by each such person or entity.

To schedule a judicial settlement conference before a judicial settlement officer "JSO", the parties must contact the JSO's *courtroom deputy*, or, in the case of Judge Hyman, [refer to his webpage for information](#).