

## Tips from the Bench

By Judge Jerome LaBarre, Multnomah County Circuit Court.

### Settlement Judges: Special Help for Special Cases Tips on How to Succeed



So you hit a wall in trying to settle your big case. The clients on both sides are mired in impasse. Both direct negotiations and private mediation failed. This is when a settlement judge might be able to help. Not every case justifies the use of our scarce judicial resources. But for the right case, this could be the right solution. On our court, in addition to our Chief ADR Judge, the Hon. Kristena LaMar, I am one of a number of judges in the Civil/Criminal Division who sometimes work as settlement judges. If you want to move in this direction, here are some tips to consider.

#### Judges Are Different Than Private Mediators

Private mediation is well understood. There are many similarities between it and a judicial settlement conference. But there are also important differences. Settlement judges work in a more formal world. Judges can be evaluative as well as facilitative. My settlement conferences take place on the 7th floor of the Multnomah County Courthouse. I direct one side to wait in the courtroom and the other side to wait in the jury room. I meet with them in my chambers. Trial is the default alternative to a settlement. This quickly becomes obvious to all.

Judicial dockets are busy and the time available for settlement conferences is usually limited compared to what occurs in private mediations. A premium needs to be placed on preparation and efficiency. This is true for both the lawyers and for the judge. Therefore, I impose the following requirements both pre-conference and at the settlement conference itself.

#### The Pre-Conference Letter Requirement

In my chambers, once the preliminary scheduling and acceptance procedures are completed, we send out guidelines on what is to be contained in a short confidential letter to be submitted to me by each side. Essentially, the letter must set forth the attorney's candid evaluation of the crucial issues; the obstacles to resolution; and, a proposed "road map" to settlement of the case. The letter should not be about legal positioning. Instead, it should be about what is really needed to assist the court in facilitating settlement.

#### The Settlement Conference

Some of the important things which can help in achieving a settlement at the conference are the following:

- 1. Have Proof of the Dollar Figures Ready.** Medical specialists, lost wages, lien amounts, economic damages and the like all need to be documented and laid out by plaintiff's counsel.
- 2. Reveal Past Settlement Offers.** My own experience is that I can work best as a settlement judge if I can come in to break an impasse. The parties should have already tried to settle the case before they enlist the help of the court.
- 3. Have Authority To Settle.** Key decision makers need to be physically present. Each of them needs to be armed with realistic settlement authority. In the case of insured defendants, this usually means an adjuster who is supervisory level or above.
- 4. Analyze Your Case and Prepare Your Clients.** Attorneys are the professionals who know their own case best. Just as when a medical doctor recommends surgery and obtains informed consent, I believe that an attorney should make a settlement recommendation to the client. This must occur prior to the settlement conference.
- 5. Breaking Impasse.** Focus on interests, not on positions. Determine how the impasse has come about. Is it a disagreement between counsel or the clients? Does it arise from different views of the facts or the law? Or is it really about a non-legal consideration such as unresolved emotional issues?
- 6. Obtaining Finality.** Once settlement has been achieved, my practice is to put a summary of the terms of the settlement on the record and have each party and attorney orally state on the court record approval of the terms. Instantly, a binding enforceable agreement comes into existence. There can be no backing out, even though the formal settlement documents are not completed until later.

Asking a trial judge to act as a settlement judge can make all the difference. Who better knows what juries are actually doing in the courthouse? But this powerful tool should be used sparingly. And counsel need to be well prepared to efficiently move the process forward.



By Heidi Moawad, Multnomah County DA's Office and Court Liaison Committee member.

#### Courthouse Update

The interim legislative committee on courthouse facilities had its last meeting in January of this year. Although there was a desire to establish a permanent committee focusing on courthouse maintenance, repair and replacement – the inability to fund a staff person to support it will keep it from going forward. It appears that since the Multnomah County Courthouse is not "shovel ready," there is little hope that the stimulus package will move a new courthouse forward.

#### Presiding Judge "Tour"

Member Dana Scheele shared her experience with Judge Maurer's visit to her firm, Hoffman Hart. Scheele said that it was an excellent discussion and the

information exchange was very helpful and she encourages other civil firms to invite the judge to come speak. MBA Executive Director Judy Edwards agreed and shared a similar experience from when Judge Maurer met with the managing partners meeting.

#### Tips from the Bench

The rotation of judges seems to help with topic selection. MBA members are reminded, however, that the MBA Web site has a link for suggesting topics for the "Tips from the Bench" column.

#### Spring Judicial Brown Bag

This year's spring brown bag will be at noon on Friday, May 8 (location and topic TBD). There was some discussion regarding whether or not the session

should focus on civil or criminal issues. Heidi Moawad of the DA's office and Chris Howard from Metropolitan Public Defenders both noted that criminal-specific sessions are available through the DA's office and OCDLA so the need for a criminal-focused topic may not be there. Additionally, Chair Anne Talcott pointed out that it is a good opportunity for civil lawyers to get to speak with judges, an opportunity that civil lawyers do not have as often as the criminal practitioners do.

#### MBA Web site

The MBA continues to request feedback about the Web site's content in general - if you have a suggestion, please contact the MBA.

## How is the Economy Affecting Your Firm? How can the MBA assist you?

By Judy A. C. Edwards, Executive Director.

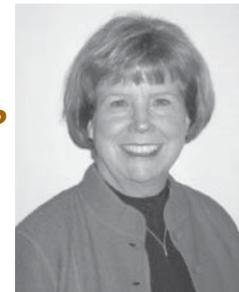
In an effort to be responsive to our members' needs, we try to focus on initiatives that may help you. We have the ability to tap affinity/business partners (Bank of the Cascades, Legal NW, Office Depot, are among our partners) and other collaborators to create new or refine existing member services to meet your needs. The sole reason for the MBA to exist is to support its members. But, we need your help.

#### Action Requested

Please send me an email with your input and/or answers to the following questions. You have my word that all responses will be kept in utmost confidence. Send to [judy@mbabar.org](mailto:judy@mbabar.org).

- Is work remaining stable for your firm? If so, why do you think that is? If not, what do you suspect are the factors behind the instability? Please share your thoughts on how the MBA might provide guidance or assistance to firms experiencing instability in the current economy.
- Are you reducing the number of lawyers and/or support staff in your firm? Are you filling positions when employees leave? Do you know that the MBA's affinity partner, Legal NW provides MBA members with discounted employee placement services and guarantees? Please send me suggestions on how the MBA might help you train lawyers and/or support staff.
- Is there a firm issue or challenge regarding the economy, or

otherwise, with which the MBA might be able to offer assistance? What things worry you or keep you up at night? What kinds of services might be helpful?



- Do you have a line of credit? If so, have you had to access it? If not, do you know that the best time to be approved for a line of credit for operating your firm is when you do not need it? Please share your suggestions on how you believe the MBA could help with this topic.
- Have your accounts receivables increased substantially? Are your outstanding invoices extending to a longer timeline?
- What type of technology support or training could the MBA provide to your lawyers and/or support staff? Please give us ideas for suggested topics, days and times that are best for you.
- How is the work/life balance in your firm? Does your firm culture encourage work/life balance in the current economy? Please forward any ideas, thoughts or suggestions on this issue to me.

Good luck to you in building your firm's success. Please always contact me with your ideas. A full, regular electronic survey of members will be conducted later this year. For now, we wanted to "take the temperature" of the financial health of our members and their firms and identify any ways in which the MBA may be able to provide support.

Judy Edwards may be reached by calling 503.222.3275 or by sending an email to [judy@mbabar.org](mailto:judy@mbabar.org).