

## **JUDICIAL SETTLEMENT CONFERENCES: A VIEW FROM THE BENCH**

### **Judge Michael Sullivan, Deschutes County Circuit Court Judge**

#### **1: Different Faces in Different Places:**

The use of Settlement Conferences in Oregon will often vary from Judicial District to Judicial District and procedure and techniques may vary from Judge to Judge. If a Judicial Conference is requested or required in your case, you should promptly review the applicable local Supplemental Local Rules on that District's web site. If you are from out of town or have never or seldom participated in a Settlement Conference in that jurisdiction, I strongly suggest that you call a local attorney who is familiar with the local process and the assigned Judge. Each Judge employs their own technique or style. In Deschutes County, we employ a signed Settlement Conference Order. Read this document in advance of the scheduled conference. It may seem obvious, but I have seen numerous attorneys who act shocked that in my jurisdiction all parties must be present, an adjustor who has authority to settle must be at the courthouse, and a memorandum about the case must be submitted the day before the conference at my office.

#### **2: Thirteen Suggested Rules for a Productive Settlement Conference:**

While I can only speak for my District, I believe that a successful Settlement Conference is far more likely if you follow these rules:

1. Know your case, review your file carefully and prepare your clients for what to expect. Knowing the key details and issues of your case can make all the difference.
2. Meet with your clients, prepare them and reach an understanding of what your goals are or what an adequate settlement would be to your clients.
3. Prepare a confidential Settlement Conference letter and deliver it directly to the Settlement Conference Judge at least the day before the scheduled conference. Don't file it with the Court clerk, as a settlement conference memo may not catch up to the file as it is moving from one station to another the day before a hearing. The memo should be brief and to the point. I read the memos the night before the conferences. A memo given to me just before a conference is not very useful. (As these letters are confidential, I either return them or have them destroyed at the conclusion of the conference).
4. Be prepared with the data you need to calculate net values. Settlement decisions are next to impossible without key information. The following are examples of necessary information in specific types of cases:

#### Dissolution Cases:

- Property lists
- Mortgage balance
- Credit card balances
- Other loan balances
- Medical bills

- Appraisals
- Retirement accounts and balances
- Medical expenses
- prenuptial agreements
- Back taxes owed
- Blue book value of vehicles and liens
- List of pre marital property
- Evidence of debt to family members

Personal injury cases:

- Medical expenses (billed, paid and out of pocket)
- PIP balances (auto cases)
- Lost wage proof
- All lien balances and details on any negotiated reductions
- Police reports/photographs
- Key medical reports
- IME reports

Boundary disputes:

- Surveys
- Maps
- Written agreements

Criminal cases:

- Accurate criminal history and appropriate grid box
- Police reports/photographs
- Restitution figures
- Co defendant status
- Custody status and waiver if any
- Lab reports
- Availability of expert witnesses

5. Be prepared to discuss unique or difficult legal issues in your case and how they might play into the risk benefit analysis.

6. Know the fee arrangement with your client ( especially at settlement and trial if the rates are different ). Providing the Judge with an accurate snapshot of the estimated cost of trial, to include cost of expert witnesses and the likely number of trial days required is always helpful.

7. Know the upcoming trial date. If the trial has not yet been scheduled, know approximately how long it will be before the case will be ready to try.

8. Be prepared to put settlement on the record. It is my practice to bring all settling parties into the Courtroom after a successful resolution and to emphasize that this will be a full and final resolution of all claims. Negotiate and be prepared to go on record as to how long it will take to cut settlement checks and draft closing documents. Bring your tax ID number with you. You

may need it.

9. Do not do a discovery dump on the other side a day or two before the Settlement Conference and expect a good result. Insurance companies will want to look closely at anticipated expenses before making an offer.

10. Make sure that all of the right people are at the conference to get full settlement authority and/or approval. Besides having an adjustor with *full* authority to settle, make sure any other necessary persons are present. An example in a dissolution might be a grandparent if she/he has a financial interest in a house that is part of the marital estate. If a young person in a personal injury case won't approve the settlement until mother approves, then figure this out in advance and have mother there.

11. If I can't help parties to resolve their case, I will sometimes suggest less expensive alternatives like binding arbitration or a personal property master. In special cases I encourage a Reference Judge. In other cases I will suggest putting a partial settlement on the record. An example might be an agreement to put a house on the market at a certain price in a dissolution case.

12. *Please* do not wait until the last moment to ask for a continuance. Litigants frequently wait months to get on my calendar. My staff cannot fill a spot in less than 48 hours.

13. A few more personal requests if you appear in my jurisdiction: Please don't bring children to a settlement conference. Besides distracting everyone involved, there is nothing for them to do. My staff cannot watch or take care of children. Finally, please do not place your feet on tables or chairs or allow your clients to do the same. While the proceeding is more informal than a trial, Court facilities are not the living room. My staff does not have the time to clean up a conference room after each group uses it, so please pick up after yourself. I can only assume that other Judges would also appreciate these courtesies.

### **3: Concluding Thoughts:**

Settlement Conferences are not just a passing fad. Not only do they produce a fair result at less cost in a shorter period of time, but they allow the Judicial system to function in an efficient manner with fewer resources.

Judge Michael Sullivan