

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

**STANDING ORDER REGARDING SETTLEMENT CONFERENCES
AND SETTLEMENT PROCEDURES BEFORE
MAGISTRATE JUDGE WES REBER PORTER**

All parties who appear for a settlement conference before Magistrate Judge Wes Reber Porter, either on the date required in a Rule 16 Scheduling Order, an “early settlement conference” requested by the parties, or otherwise (the settlement conference), must comply with the requirements set forth in Local Rule 16.5 and this Standing Order.

The purpose of the settlement conference is to facilitate the resolution of a civil case. It will be conducted in such a manner as not to prejudice any party in the event settlement is not reached. To that end, all matters communicated to the Court in confidence will be kept confidential, and will not be disclosed to any other party, or to the trial judge.

The Court’s assistance in settlement generally. Settlement discussions may be appropriate at any stage of the litigation. Productive settlement discussions, with or without assistance from the Court, occur prior to the Rule 16 scheduling conference, leading up to significant deadlines in the case, following the briefing on a dispositive motion, while awaiting a ruling from the trial judge, during trial preparation, and at all other times. To that end, the Court can assist

with settlement efforts at times other than at the settlement conference. For example, the Court's work in settlement is often disaggregated into shorter communications and conferences with one party only. The Court can also assist the parties, after they have met and conferred, with scheduling and resetting a settlement conference.

If the Court can be helpful to a party in settlement, including prior to the settlement conference, then send an email to porter_orders@hid.uscourts.gov or contact Ms. Jocelyn Orosz, courtroom manager for Judge Porter.

The Court's expectations for the parties and counsel. The settlement conference¹ should follow and build upon meaningful settlement discussions between the parties. Settlement conferences are too often unproductive because the parties have not made a serious effort to settle the case on their own prior to the conference. Accordingly, before the settlement conference, the parties are ordered to make a good faith effort to settle the case without the involvement of

¹ At this time, all settlement conferences will continue to be conducted remotely by Video Teleconference (VTC) and the Court will provide details regarding VTC access prior to the conference date. When the Court resumes holding in-person settlement conferences, any request for a party or party representative to be excused from attendance, or to attend remotely, must be made by letter to the Court copied to all counsel. In considering whether to grant such a request, the Court will consider the parties' settlement efforts to date and the logistics of requiring attendance. The Court is more likely to grant requests to be excused from attendance or to attend remotely for early settlement conferences and in situations where the parties have demonstrated serious efforts to settle prior to the conference.

the Court. A good faith effort to settle includes, at the very least, exchanged demands and offers, as well as specific proposals and counter proposals with respect to the key terms of settlement.

The Court may vacate a settlement conference if the parties do not comply with this Standing Order, including the requirement to exchange demands and offers. Similarly, if the settlement conference, particularly an early settlement conference requested by the parties, is premature or otherwise likely to not be productive, then the parties should request to reschedule the conference by email to porter_orders@hid.uscourts.gov or contact Ms. Jocelyn Orosz *prior to* the deadline to submit confidential settlement conference statements to the Court.

Who will participate in the settlement conference? In addition to the lead counsel, each party or a designated representative with final settlement authority² must attend the settlement conference. The order for parties' appearance is intended to increase the efficiency and effectiveness of the settlement conference

² "Final settlement authority" means that the representative at the settlement conference must be authorized to explore settlement options fully and to agree at that time to any settlement terms acceptable to the parties. See Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person should have "unfettered discretion and authority" to change the settlement position of a party. See Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference contemplates that the person's view of the case may be altered during the face-to-face conference. Id. at 486. A limited or sum certain authority is not adequate. See Nick v. Morgan's Foods, Inc., 279 F.3d 590, 595-97 (8th Cir. 2001).

by reducing the time for communication of offers and expanding the ability to explore options for settlement. If a defendant is insured, an adjuster or other representative of that defendant's insurer with final settlement authority also must attend the settlement conference.

Confidential Settlement Statements. Each party shall submit to the Court a confidential settlement conference statement by a deadline set by the Court, typically no later than seven (7) days before the conference. The confidential settlement conference statement is not a trial brief nor a dispositive motion. Instead, it is an outline that includes (i) a *brief* description of the case, (ii) legal issues and factual disputes that may impact settlement, (iii) the extent of discovery and motions practice conducted, and yet to be conducted, and (iv) a status of the settlement negotiations. Settlement discussions may, and should, continue after the parties submit their statements to the Court.

Unless otherwise ordered, the confidential settlement conference statement must be emailed to the Court at porter_orders@hid.uscourts.gov. Paper copies must also be provided to the Court if a party's submission, including exhibits, exceeds twenty-five (25) pages.³

³ Confidential settlement conference statements should only exceed 25 pages or include a significant number of exhibits in rare cases with complex legal issues or factual disputes that may impact settlement discussions. It is not helpful to the Court for parties to include lengthy legal arguments from dispositive

At the settlement conference. At the settlement conference, we will first meet with all parties together and thereafter we will separate into confidential caucuses. The presentations and discussion at the settlement conference, particularly while all parties are together, shall aim only to foster settlement. That is, the settlement conference is not intended for advocating a legal or factual position in the litigation, conducting discovery, nor resolving other disputes between parties. While all parties are together, the parties should update the Court on the progression of settlement discussions within the week prior to the conference and after the parties submitted their statements.

Once separated into separate caucuses, the Court will speak directly with the client or representative (or, when applicable, the adjuster) about the facts of the case and their settlement positions. The Court may ask questions and offer a candid assessment of the case and the risks of proceeding without settling. The Court can best aid settlement discussions when the client or representative and their counsel are equally candid about their case and settlement positions. It is counsel's responsibility to prepare their client or representative for the settlement discussion with the Court.

motions or other briefs or to append numerous or lengthy exhibits to their statement that are more appropriate for a pretrial motion or trial brief.

Settlement on the record. At any time during the litigation, the parties may contact the Court to request a settlement on the record. If a settlement is reached during the settlement conference, then the Court may proceed directly into a settlement on the record. Counsel should review the key terms of settlement with all other counsel and their respective clients prior to the settlement on the record. The Court expects counsel to have conferred with the opposing counsel and their clients about *all* key terms in a settlement prior to placing it on the record.

If the terms of settlement are acceptable to the Court, the Court will find that the parties have entered into a valid and enforceable settlement and, accordingly, vacate all dates and deadlines remaining in the case. Typically, the Court also will provide the parties a deadline to submit a Stipulation for Dismissal to the trial judge's Orders email. The Court expects the parties to sign the settlement documents and, when applicable, pay the money agreed to in settlement before the deadline to submit the Stipulation for Dismissal.

Following the settlement conference. In many cases, the parties (and the Court) continue to work toward settlement after the settlement conference. Assuming there is no settlement on the record following the settlement conference, the parties should continue to evaluate their settlement positions and discuss settlement through the case. The parties may involve the Court in settlement discussions following the settlement conference, including meeting with one party

only to discuss a next demand, offer or other settlement terms or ideas and conveying the offer or demand to the opposing side. If the Court can be helpful to a party in settlement, including after the settlement conference, then send an email to porter_orders@hid.uscourts.gov or contact Ms. Jocelyn Orosz.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, SEPTEMBER 12, 2022.



A handwritten signature in black ink, appearing to read "Wes Reber Porter".

Wes Reber Porter
United States Magistrate Judge

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