

# JAG The Settlement Process



The settlement conference, as conducted by the Judicial Arbitrator Group, is an informal assessment and negotiation session. Counsel will not be required to provide any formal oral presentation or argument beyond the written material presented. Counsel wishing to provide an expanded presentation of their case, either electronically (e.g. Powerpoint) or otherwise, should contact JAG beforehand for arrangements. The actual process typically will be divided into three parts.

First, all parties and counsel will meet together and review the basic facts and legal issues involved in the litigation. To obtain and clarify the primary issues, the arbiter may ask both counsel and litigants questions during this phase.

Next, the process will usually involve separating the parties and reviewing the strengths and weaknesses of the respective sides of the dispute. During this part of the conference, the settlement arbiter draws on his or her expertise and experience in providing an objective analysis of the value of the case and the merits of the legal arguments. These discussions are conducted in a confidential nature. The arbiter will then negotiate among the parties until a satisfactory settlement is reached or it becomes apparent that additional information is needed and negotiations can be concluded at a later date either by telephone or through an additional conference.

The final step involves bringing the settlement conference to close and the drafting of a Settlement Memorandum outlining the agreed upon terms of the settlement. When the situation warrants, a written settlement agreement and releases may be drafted and signed at the conference close.

## Is This the Right Case?

Like any court or other legal proceeding, settlement conferences require preparation and forethought. Before suggesting or agreeing to attend a settlement conference, generally examine your case and ask the following questions:

1. Are you attending the conference only to see if the other side finally wants to be reasonable and concede the merits of your case or to hear your opponent told he or she can't win?

**Inappropriate Case**

2. Are you attending to find out what your opponent's case is really about or what its strengths or weaknesses are?

**Inappropriate Case**

3. Do both counsel and clients appear to be seriously interested in the additional objective evaluation of the merits of the dispute? **Occasionally Appropriate Case**

4. Does your opposing counsel have substantially more or less trial experience than you do but everyone seems at least willing to discuss the issues? **Appropriate Case**

5. Does either client now seem to have unrealistic expectations from litigation even if acquired from counsel? **Appropriate Case**

6. Do your feelings about opposing counsel compel you to brace yourself for argument every time you encounter him or her, or have you become so close to your client that your objectivity could be questioned? **Appropriate Case**

7. Does your client seem incapable of setting aside his emotions and hearing your logical discussion of settlement? **Appropriate Case**

It should be noted, if counsel can determine the suitability of the case for the settlement process and can review the settlement conference process with clients prior to the actual conference, the chances for a successful resolution of the case are greatly enhanced.