

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Plaintiff,)	CASE NO.
)	
)	JUDGE
)	
v.)	MAGISTRATE JUDGE
)	REUBEN J. SHEPERD
)	
)	ORDER SETTING
Defendant,)	MEDIATION/SETTLEMENT
)	CONFERENCE

A mediation/settlement conference will be held in the above-captioned case on, ____, at _____, in Chambers 11B, Carl B. Stokes United States Courthouse, 801 West Superior Avenue, Cleveland, Ohio, before the Honorable Reuben J. Sheperd, United States Magistrate Judge. All parties and their lead counsel are ordered to appear at that time.

MEDIATION/SETTLEMENT CONFERENCE PREPARATION

Over 95% of civil cases settle prior to trial. Therefore, settlement preparation should be treated as seriously as trial preparation. Planning is essential because the party who is best prepared generally obtains the best results. The Court has found the following steps are essential to a successful mediation/settlement conference.

I. ATTENDANCE OF ALL PARTIES REQUIRED

A. The conference must be attended by all named individual parties, as well as by an authorized representative of any named corporate, governmental, or other entity, together with lead trial counsel for each party.

B. A corporate party must send a representative with **full and complete authority to bind the company up to the value of plaintiff's claim and/or defendant's counterclaim**. A governmental entity must send a representative authorized to act on its behalf. When the settlement decision will be made in whole or part by an insurer, **the insurer must send a representative in person with full and complete authority to make settlement decisions**.

C. Persons with ultimate settlement authority must be personally present on behalf of each party. In the confidential statement referenced below, counsel must identify the client representative(s) that will be attending and certify that the attending representative has full settlement authority. The Court may reschedule or cancel the conference if the representative is determined to be unqualified. Failure to produce the appropriate person(s) at the conference may result in an award of costs and attorney fees incurred by the other parties in connection with the conference and or other sanctions against the noncomplying party and/or counsel.

II. MEDIATION/SETTLEMENT CONFERENCE MEMORANDUM

A. Each party must submit a confidential settlement statement to the Magistrate Judge no later than seven days prior to the mediation/settlement conference. The memorandum will not become a part of the case file maintained by the clerk of court and is for the exclusive use of the Magistrate Judge in preparing for the mediation/settlement conference.

B. The Mediation/Settlement Conference Memorandum must contain:

1. A recitation of the key facts relevant to a determination and/or settlement of the case;
2. An analysis of the legal issues that will affect the settlement evaluations of the parties;
3. A discussion of the strengths and weaknesses of the case;
4. The party's view concerning the potential for resolution of the case by settlement;

5. A description of settlement efforts made to date;
6. A listing of any critical documents, photographs or other exhibits essential to the court being able to grasp the party's settlement position and/or case evaluation. If not already part of the court file, copies of said documents must be provided; and
7. A certification that the persons attending on behalf of the party have full and complete settlement authority, as described in Section I above.

C. The settlement conference memorandum **should not be lengthy** but should contain enough information to be useful to the Magistrate Judge in analyzing the factual and legal issues in the case. The parties are encouraged to be candid in their statements.

D. The mediation/settlement conference memorandum must not be filed with the clerk but must be emailed to the Magistrate Judge. The email address is: Sheperd_Chambers@ohnd.uscourts.gov, and the fax number is: 216-357-7139. Unless requested by **all** parties, copies of the settlement statement **must not** be provided to the other parties in the case.

E. If the mediation/settlement conference memorandum, including exhibits, exceeds 50 pages, counsel must also deliver a hard copy of the statement and exhibits to Chambers 11B, (in addition to emailing or faxing them as set forth above). The exhibits should be properly tabbed and formatted for efficient use by the Magistrate Judge.

III. EX-PARTE PRE-MEDIATION/SETTLEMENT TELEPHONE CONFERENCE

The Magistrate Judge will conduct ex-parte telephone conferences with counsel for each party between the submission of the mediation/settlement conference memorandum and the mediation/settlement conference. Counsel must be prepared to discuss any information in the memorandum, any information that could enhance or pose an impediment to settlement, and any other issues that counsel believes should be conveyed to the Magistrate Judge. All matters

discussed during the ex-parte pre-mediation/settlement telephone conference will be maintained in confidence by the Magistrate Judge. Upon receipt of this order, counsel is directed to contact the Magistrate Judge's courtroom deputy via email at Sheperd_Chambers@ohnd.uscourts.gov to schedule the ex-parte telephone conference.

IV. PRE-SETTLEMENT CONFERENCE DEMAND AND OFFER

A mediation/settlement conference is more likely to be productive if, before the conference, the parties have exchanged meaningful written settlement proposals. Accordingly, no later than 21 days prior to the settlement conference, each counsel making affirmative claims for relief must submit a written itemization of damages and settlement demand to opposing counsel with a brief explanation of why such a settlement is appropriate. No later than 14 days prior to the settlement conference opposing counsel must submit a written response with a brief explanation of why such a settlement is appropriate. On occasion, this process will lead directly to a settlement.

If settlement is not achieved, the parties must include copies of the settlement demand(s) and offer(s) as exhibits to their settlement statement. Do not file copies of these papers with the clerk of court.

V. MEDIATION/SETTLEMENT CONFERENCE FORMAT

The Court will generally use a format in which the Magistrate Judge will welcome the parties and explain the process, including confidentiality of the mediation/settlement conference. Counsel should be prepared to respond to questions from the Magistrate Judge concerning elements of their causes of action or defenses, their damage calculations, the applicable law, and other matters, during this joint segment of the conference. Opening statements by counsel will be discouraged.

Once opening remarks are concluded, the Court will separate the parties and conduct individual caucus meetings. The Court expects both the lawyers and the party representatives to be fully prepared to participate. The Court encourages all parties to keep an open mind in order to re-assess their previous positions and to find creative means for resolving the dispute.

VI. STATEMENTS INADMISSIBLE

Statements made by any party during the mediation/settlement conference may not be used in discovery and will be inadmissible at trial. Parties are encouraged to be frank and open in their discussions. The Court expects the parties to address each other with courtesy and respect.

VII. ISSUES TO BE DISCUSSED AT SETTLEMENT CONFERENCE.

Parties should be prepared to discuss the following at the mediation/settlement conference:

1. What are your objectives in the litigation?
2. What issues (both in and outside of the lawsuit) need to be resolved? What are the strengths and weaknesses of your case?
3. Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?
4. What are the factual and legal points of agreement/disagreement between the parties?
5. What are the impediments to settlement?
6. What remedies are available through litigation or otherwise?
7. Are there possibilities for a creative resolution of the dispute?
8. Do you have adequate information to discuss settlement? If not, how will you obtain sufficient information to make a meaningful settlement discussion possible?
9. Are there outstanding liens? Do we need to include a representative of the lienholder?
10. What legal costs or case expenses will you incur to take the case through trial and appeal?

VIII. CLIENT PREPARATION FOR MEDIATION/SETTLEMENT CONFERENCE

For many clients, this will be the first time they have participated in a court supervised mediation/settlement conference. Therefore, counsel must provide their clients with a copy of this Standing Order and must discuss with them the points contained herein prior to the mediation/settlement conference.

IX. REQUESTS TO RESCHEDULE CONFERENCE OR EXCUSE ATTENDANCE

Any requests to reschedule settlement proceedings and/or excuse the in-person attendance of a named party or party representative must be set forth in a written motion. Such motion must be filed no less than 10 days prior to the scheduled proceeding, absent extenuating circumstances. With regard to a motion to reschedule settlement proceedings, the moving party (or parties, if it is a joint motion) must confer with opposing counsel and propose no less than three alternative dates that are agreeable to all participants. Any request not complying with the above provisions will be denied. The Court will not entertain telephone calls or emails requesting that settlement proceedings be rescheduled or that named parties/party representatives be excused.

IT IS SO ORDERED.

Dated: _____

REUBEN J. SHEPERD
UNITED STATES MAGISTRATE JUDGE