

# OKLAHOMA EASTERN

## LCvR 16.2 Settlement Conferences.

- (a) **Purpose.** The purpose of the settlement conference is to permit an informal discussion between the attorneys, parties, and the settlement judge on every aspect of the case bearing on its settlement value in an effort to resolve the matter before trial.
- (b) **Referral and Scheduling the Settlement Conference.** All civil cases set on a trial docket are automatically set for settlement conference before the settlement judge. Also the Court may, upon its own motion or on the request of any of the parties, set a settlement conference at any practicable time. Form settlement conference orders shall be available from the Court Clerk, or from the Court's website at [www.oked.uscourts.gov](http://www.oked.uscourts.gov). The terms of the settlement conference order govern the procedures for the settlement conference. The assigned district judge may, in his or her discretion, require that the parties pay for a settlement conference in any reasonable manner or amount.
- (c) **Settlement Judges.** A district judge other than the judge assigned to the case, a magistrate judge, or an adjunct settlement judge designated by the Court, will normally preside at the settlement conference. Adjunct settlement judges shall be selected by the Court from among members of the bar in good standing and chosen based upon their expertise, experience, actual and apparent impartiality, reputation for fairness, training, and temperament. They shall be invited to serve without compensation. Any party or counsel of record may move to disqualify the assigned settlement judge pursuant to 28 U.S.C. § 455, other applicable law or professional responsibility standards. No adjunct settlement judge may be called as a witness, except as requested by a judge of this Court. In that instance, the adjunct settlement judge shall not be deposed, and shall testify as the Court's witness. In cases where the settlement effort is expected to be extensive, or in connection with discovery matters, the Court may appoint an adjunct settlement judge as a special project settlement or discovery judge, and order the parties to pay for his or her time at a reasonable hourly rate. Such payment shall be apportioned between the parties as agreed, or by the Court on an equitable basis.
- (d) **Attendance Requirements.** The lead attorney who will try the case for each party shall appear, and shall be accompanied by one with full settlement authority. The latter will be the parties if natural persons or representative of parties which are not natural persons, but may not be counsel (except in-house counsel) or a person who is not directly or actively associated with the party or parties. Other interested entities such as insurers or indemnitors shall attend and are subject to the provisions of this Rule. Governmental entities and boards shall send a representative and counsel who, together, are knowledgeable about the facts of the case and the governmental unit's or board's position, and have, to the greatest extent feasible, authority to settle. Except as provided in subsection (e) below, only the settlement judge may excuse attendance of any attorney, party or party representative. Any party excused from appearing in person shall be

available to participate by telephone, if required. Failure to attend the settlement conference or failure to cooperate fully may result in the imposition of sanctions in accordance with LCvR 16.1(b)(2) and Fed. R. Civ. P. 16(f).

- (e) **Governmental Entities.** In the event a governmental entity which is a party determines that it will be unable to provide a representative with full settlement authority at the settlement conference, the governmental entity shall promptly move for leave to proceed with a representative with limited authority. The motion shall be filed and delivered to the settlement judge no later than eleven (11) days prior to the conference and shall contain: (1) the reasons which make it impracticable for a party's representative to appear with full settlement authority; (2) a detailed description of the limited authority to be exercised at the conference; and (3) alternative proposals by which full authority may be exercised at or subsequent to the conference. Upon consideration of the motion, the settlement judge may allow the governmental entity to appear with limited authority or may, notwithstanding the motion, require appropriate persons to appear as may be necessary to have full settlement authority at the conference. Any adjunct settlement judge may defer such determination to the judge then supervising the adjunct settlement judge program or the assigned trial judge.
- (f) **Submission of Written Conference Statements.** A settlement statement shall be submitted to the settlement judge and served on opposing counsel at least seven (7) days preceding the date of the settlement conference unless otherwise ordered by the court. It shall concisely summarize the parties' claims/defenses/counterclaims, etc., the parties' views concerning factual issues, issues of law, liability, damages or relief requested. The statement shall not exceed five (5) pages in length, shall conform to the format requirements set forth in the Local Rules, but shall not be filed in the case or made part of the Court file.
- (g) **Settlement Conference Process.** Prior to settlement conference, the parties shall discuss settlement with their respective clients and opposing counsel (or pro se parties) so that the issues and bounds of settlement have been explored in advance of the settlement conference. The parties, their representatives and attorneys are required to be completely candid with the settlement judge so that the judge may properly guide settlement discussions. Pertinent evidence to be offered at trial, documents or otherwise, may be brought to the settlement conference for presentation if particularly relevant.
- (h) **Authority of Settlement Judge.** The settlement judge may excuse attendance of any attorney, party or party's representative; meet jointly or individually with counsel, alone or with parties or persons or representatives interested in the outcome of the case without the presence of counsel; and issue such other and additional requirements as shall seem proper, including follow-up sessions telephonically or otherwise, in order to expedite an amicable resolution of the case.
- (i) **Confidentiality.** The settlement judge, all counsel and parties, and any other persons attending the settlement conference shall treat as confidential all written and oral communications made in connection with or during any settlement conference. Neither

the settlement conference statements nor communications during the conference with the settlement judge may be used by any party in the trial of the case unless otherwise permitted under Federal Rules of Evidence 408. No communication relating to or occurring at a Court-ordered settlement conference may be used in any aspect of any litigation except proceedings to enforce a settlement agreed to at the conference, unless otherwise permitted under Federal Rules of Evidence 408.

- (j) **Conclusion of the Settlement Conference.** At the conclusion of the settlement conference, the settlement judge shall notify the Court whether the case did or did not settle. If the case settled, counsel shall prepare and file the appropriate dismissal or closing papers.
  
- (k) **Other Alternative Methods.** The Court may, in its discretion, set any civil case for summary jury trial, mini-trial, executive summary jury trial (summary jury trial where chief executive officers of corporate parties participate as part of a three-judge trial panel), mediation, arbitration, or other method of alternative dispute resolution as the Court may deem proper, so long as due process is not abrogated or impaired.
  
- (l) **Sanctions.** Any party who, in the Court's judgment, acts in bad faith or impairs settlement proceedings may be subject to appropriate sanctions. Failure to appear, or to participate in good faith in a settlement conference ordered by the Court, may result in any of the following sanctions:
  - 1. The striking of a pleading;
  - 2. A preclusion order, staying the proceeding;
  - 3. A default judgment;
  - 4. Assessment of expenses and fees against a party, attorney individually, insurer or indemnitor, or combination thereof; or
  - 5. Such other order as the Court may deem just and appropriate.