



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION
ADMINISTRATIVE LAW SECTION**

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STANDING ORDER FOR JUDICIAL SETTLEMENT CONFERENCES

The Illinois Human Rights Commission strongly encourages parties to explore the option of settling their cases at the earliest possible opportunity. For both represented parties and those who are representing themselves, early consideration of settlement may create a substantial savings of time, money, and energy that are often expended in contested litigation. Better still, because any discussion of settlement is “off the record,” a party’s decision to offer or possibly accept a certain amount to settle a case cannot later be used as evidence at trial to prove liability on disputed issues. For this reason, a judicial settlement conference is one of the best ways to encourage a productive dialogue on a case, while still safeguarding the right to due process that is enjoyed by all parties that appear before the Commission.

Consideration of settlement is a thoughtful matter that requires some preparation on the part of all parties to a case. This Standing Order sets forth the procedures the parties should follow if they wish to request a judicial settlement conference. In addition, this Standing Order describes the steps the parties need to take in advance of a judicial settlement conference to ensure that any discussion of settlement is maximally productive. In all cases, judicial settlement conferences will be conducted with mutual civility and respect towards the opposing party, in the same manner as the Commission expects to see in public hearings and in written submissions.

Attorneys who attend judicial settlement conferences are directed to provide a copy of this Standing Order to their clients (and discuss its content with their clients) prior to any judicial settlement conference.

REQUESTING A JUDICIAL SETTLEMENT CONFERENCE

A judicial settlement conference is typically available to the parties at any time, although two or more parties must agree to attend a judicial settlement conference (and agree to participate in good faith) before any such meeting is scheduled.

If two or more parties to a case believe that a judicial settlement conference would be beneficial, they should take the following steps:

1. The parties should file and submit a joint request for a judicial settlement conference to the assigned administrative law judge in their case. This joint request need not be long, but must identify all parties that are jointly requesting a settlement conference.
2. The assigned administrative law judge will advise the Chief Administrative Law Judge of the filing of the joint request. The Chief Administrative Law Judge will then issue an order assigning a different administrative law judge (hereafter, the “Settling ALJ”) to conduct the judicial settlement conference.
3. Ordinarily, the Settling ALJ will not have had prior involvement in the case and will not have ruled on any contested motions in the matter. However, where all parties to a case agree—including any parties who may not be participating in the judicial settlement conference—the Chief Administrative Law Judge may consider a joint and unopposed request to have the assigned administrative law judge in the case also serve as the Settling ALJ. Such requests are within the discretion of the Chief Administrative Law Judge to grant or deny. If all parties to the case consent to the assigned administrative law judge also serving as the Settling ALJ, this fact needs to be reflected in the joint request for the judicial settlement conference that is initially filed with this administrative court.
4. Once the Settling ALJ has been named by the order of the Chief Administrative Law Judge, the Settling ALJ will issue an order in the case scheduling a status hearing at which the parties will determine the date on which the judicial settlement conference will occur. At the status hearing, the parties should be prepared to discuss their availability and should also raise with the Settling ALJ any requests to deviate from the procedures set forth in this Standing Order.

PREPARING FOR A JUDICIAL SETTLEMENT CONFERENCE

This administrative court has found that judicial settlement conferences are far more productive when the parties have exchanged their settlement positions in writing before the conference. These writings inform the parties of their respective positions and provide the Settling ALJ with the information he or she needs to assist the parties to explore the possibility of settlement.

1. The Settlement Demand Letter

Unless a different schedule is set by the Settling ALJ, the Complainant (or Complainant’s counsel) must deliver a “settlement demand letter” to the Respondent (or Respondent’s counsel) at least fourteen (14) days before the judicial settlement conference.

A “settlement demand letter” is not intended to be a long or onerous document. Instead, the Complainant (or Complainant’s counsel) should draft a short letter that briefly summarizes the strongest evidence for Complainant in the case. The Complainant may also wish to preview the expected testimony of certain witnesses or point the Respondent towards certain documents the Complainant may seek to use at trial.

The Complainant’s settlement demand letter must contain a realistic “demand” for the total amount of money the Complainant will accept to settle the case. The demand should be less than the Complainant

believes he or she might win at a public hearing and should be accompanied by some explanation of how the Complainant calculated the specific number requested.

Although this administrative court recognizes that the complexity of issues may affect the length of a settlement demand letter, parties should endeavor to limit their settlement demand letters to no more than a few pages (exclusive of exhibits), unless directed otherwise by the Settling ALJ.

2. The Response Letter

Unless a different schedule is set by the Settling ALJ, the Respondent (or Respondent's counsel) must deliver a response letter to the Complainant (or Complainant's counsel) at least seven (7) days before the judicial settlement conference.

A "response letter" is not intended to be a long or onerous document. Instead, the Respondent (or Respondent's counsel) should draft a short letter that responds to the points made in the Complainant's settlement demand letter, including a summary of the strongest evidence for the Respondent in the case. The Respondent may also wish to preview the expected testimony of certain witnesses or point the Complainant towards certain documents the Respondent may seek to use at trial.

The Respondent's response letter must contain a realistic counteroffer to the Complainant's demand. The counteroffer should be greater than zero (or some other *de minimis* amount) and should be accompanied by some explanation of how the Respondent calculated the specific counteroffer delivered.

Although this administrative court recognizes that the complexity of issues may affect the length of a response letter, parties should endeavor to limit their response letters to no more than a few pages (exclusive of exhibits), unless directed otherwise by the Settling ALJ.

3. Delivering Settlement Letters to the Settling ALJ

At least seven (7) days prior to the judicial settlement conference, the parties should provide copies of their respective settlement letters to the Settling ALJ. The parties are encouraged to deliver copies of these letters to the Settling ALJ electronically (*i.e.*, by e-mail) to avoid delays.

However, the parties are advised that their settlement letters should not be filed with the Commission or submitted as pleadings in their cases.

4. Reviewing the Settlement Demand Letters

All parties attending a judicial settlement conference (and their counsel) should read the respective settlement letters of each party in advance of attending the scheduled judicial settlement conference.

5. Protection of Settlement Communications Under Ill. R. Evid. 408

All parties submitting settlement letters (and subsequently attending the judicial settlement conference) are advised that the content of such letters—and any settlement matters discussed at the judicial settlement conference—are protected by Illinois Rule of Evidence 408, which prohibits the use of any offer to compromise from being introduced at trial to prove liability on the part of any opposing party.

ATTENDING A JUDICIAL SETTLEMENT CONFERENCE

Unless the Settling ALJ directs otherwise by separate order, a party with “full settlement authority” must attend a judicial settlement conference on behalf of both the Complainant and the Respondent. “Full settlement authority” means the authority to negotiate and agree to a final and binding settlement agreement without the need to consult others who are not in attendance at the settlement conference.

For example, if a party is an individual, that individual must attend the judicial settlement conference. Alternatively, if a party is a corporation or a governmental entity, a representative of that corporation or governmental entity with “full settlement authority” (in addition to any counsel of record) must attend the judicial settlement conference.

If a party requires the approval of an insurer to settle a case, a representative of that insurer with full settlement authority must also attend the judicial settlement conference, unless the Settling ALJ directs otherwise by separate order.

This administrative court feels strongly that the presence of individuals who have a stake in the outcome of a case greatly increases the chances of settlement. Consequently, absent a showing of unusual or extenuating circumstances, the Settling ALJ will not permit a party, a party’s counsel, or an insurance representative to be merely “available by phone” during a judicial settlement conference. On the contrary—these individuals and entities must attend the judicial settlement conference and actively engage in the interactive process to resolve the dispute.

FORMAT OF A JUDICIAL SETTLEMENT CONFERENCE

Although the format of each judicial settlement conference may vary based on the direction of the Settling ALJ, this administrative court will generally follow a traditional mediation format in which the Settling ALJ initially meets with the parties together and then holds private meetings with each party until a resolution is reached. Such processes take time, so the parties should reserve several hours (at least) for the completion of any judicial settlement conference. The Settling ALJ also retains the authority to invite the parties back for additional settlement sessions on subsequent dates (although further judicial settlement conferences will only be conducted upon the agreement of two or more parties who attended the initial judicial settlement conference).

The parties attending a judicial settlement conference should not prepare formal presentations about their cases. Instead, the parties or their representatives should be prepared to participate in “back and forth” discussions regarding the relief sought and the evidence at issue. This administrative court encourages all parties to be willing to constantly re-evaluate their positions and explore creative and/or non-traditional solutions for resolving their dispute.

The parties are reminded that settlement is a voluntary process, and that any party may elect to end settlement negotiations at any time before an agreement is reached.

CIVILITY AND PROFESSIONALISM AT A JUDICIAL SETTLEMENT CONFERENCE

This administrative court demands the highest level of professionalism and civility from the litigants who appear in Human Rights Commission cases. These same standards also apply to judicial settlement conferences. Accordingly, this administrative court expects all parties attending a judicial settlement

conference to address each other with mutual courtesy and respect. While this does not mean that the parties are prohibited from speaking openly and candidly about their views of the case, insults and other forms of impertinent conduct are counterproductive, and may result in the Settling ALJ ending the judicial settlement conference if the behavior of one or both parties is not conducive to resolving the dispute.

In all instances, the parties are encouraged to remember the words of Former Associate Justice of the United States Supreme Court Ruth Bader Ginsburg (the “Notorious R.B.G.”), who famously observed: “You can disagree without being disagreeable.”

TOPICS FOR DISCUSSION AT A JUDICIAL SETTLEMENT CONFERENCE

The parties attending a judicial settlement conference (and any counsel of record) are strongly encouraged to consider (and be prepared to address) the following topics at the judicial settlement conference, which will largely inform and guide the discussion conducted by the Settling ALJ:

1. What is the outcome you hope to achieve in this case?
2. What are the strengths and weaknesses of your case?
3. Do you understand the opposing side’s view of this case? What is incorrect about their perception? What is correct about their perception?
4. What are the primary points of agreement and disagreement between the parties?
5. If the Complainant prevails at trial, what damages does the law allow?
6. If the Respondent prevails at trial, what costs and expenses will be incurred to achieve that result?
7. Does the possibility exist for a creative, non-traditional, or non-monetary resolution of the case (in whole or in part)?
8. For both parties, what is the best alternative to a negotiated agreement if the case does not resolve at a judicial settlement conference?

RESOLVING YOUR CASE AT A JUDICIAL SETTLEMENT CONFERENCE

Although a settlement negotiation is a voluntary process from which any party can withdraw at any time, reaching a compromise—and *accepting* that compromise as a means of resolving the case—has important legal ramifications for both parties. Under Illinois law, settlement agreements are governed by contract law, meaning that if a party accepts an offer to settle a case (even orally), that agreement can potentially be enforced in a state or federal court in the same manner as a contract between parties. For this reason, the parties should be aware that agreeing to settle a case is an act of finality from which a party may not be able to withdraw, so the parties should be certain they wish to resolve their case before agreeing to all settlement terms proposed by the opposing party.

Where a settlement is reached at a judicial settlement conference, the parties who are participating in the settlement will be asked to complete and sign a “Confirmation of Settlement” form, which is attached

to this Standing Order as **Exhibit A**. The Settling ALJ will also issue an order noting and recording the date of the settlement conference. The order will further reflect the fact that “all material terms in dispute” have been resolved between the parties as of the date of the judicial settlement conference at which the agreement was reached.

The parties are hereby advised that the use of the phrase “all material terms in dispute” by any Settling ALJ of this Commission will be presumed to mean and will include (at a minimum):

1. The total amounts of any monies or attorneys’ fees to be paid in settlement, including the identities of all parties that are required to pay and receive such monies;
2. Any material terms governing the transfer of monies to be paid in settlement, including timing, terms, or other conditions precedent;
3. Any material, non-monetary settlement terms upon which a party insisted as a condition of settlement; and
4. Any other material terms upon which a party insisted to resolve the case at the judicial settlement conference.

The settling parties are advised that where a settlement is reached, and where the Settling ALJ issues an order reflecting the fact that “all material terms in dispute” have been resolved, no subsequent public hearing (*i.e.*, trial) of the case will be conducted, even if a party subsequently wishes to withdraw from the settlement. See *In the Matter of Watkins v. Illinois Dept. of Corr.*, 1998 ILHUM Lexis 386 (Aug. 20, 1998).

The parties are also advised that unless they submit the terms of their finalized settlement to the Human Rights Commission for approval pursuant to 56 Ill. Admin. Code § 5300.310, this administrative court will not have jurisdiction to enforce any settlement agreement concluded by the parties once the case has been voluntarily dismissed pursuant to 56 Ill. Admin. Code § 5300.780 (which is the process used when the parties wish to keep the terms and conditions of their settlement out of any available public record).

RESCHEDULING A JUDICIAL SETTLEMENT CONFERENCE

Ordinarily, due to the number of parties that are required to reserve significant time in advance, a judicial settlement conference will not be moved or rescheduled once the Settling ALJ has determined the time, place, and format of the discussion. As such, a judicial settlement conference will not be moved or rescheduled absent a showing of extraordinary reasons for doing so at least twenty-one (21) days prior to the selected date for the judicial settlement conference.

Notwithstanding the foregoing policy, this administrative court recognizes that emergency situations arise that may necessitate the cancelation of a judicial settlement conference. Where it is necessary to cancel a judicial settlement conference less than twenty-one (21) days before the event, a party seeking cancellation must provide the earliest practicable notice of the need for cancelation to the Settling ALJ. If the rationale for cancelation is either unjustifiable or unacceptably delayed, the Settling ALJ reserves the right to impose sanctions to compensate the opposing party (or parties) for any time lost, including the imposition of attorneys’ fees and costs. The Settling ALJ also has broad discretion to award sanctions where either party fails to appear at a judicial settlement conference without proper notice or without a sufficiently acceptable *post hoc* excuse for the party’s absence.

RESCHEDULING OF DEADLINES OR PROCEEDINGS

The parties are advised that the Settling ALJ does not have the power to postpone, reschedule, or cancel any pending deadline or proceeding in the underlying case. Such power is expressly reserved to the administrative law judge that is assigned to adjudicate the public hearing, to whom the parties must still apply if they wish to receive relief from any scheduled deadline or proceeding previously imposed by an order of this administrative court.

VARYING FROM THIS STANDING ORDER

Where any party wishes to depart from the regular procedures set forth in this Standing Order, the party should make an appropriate request to the Settling ALJ prior to the exchange of the settlement letters contemplated above. Such requests must indicate whether the party has discussed the requested variance with the opposing party and whether the opposing party consents to the requested variance.

ILLINOIS HUMAN RIGHTS COMMISSION



BY:

A handwritten signature in black ink, appearing to read "B. Weintal", written over a horizontal line.

BRIAN WEINTHAL
CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION
ADMINISTRATIVE LAW SECTION**

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**EXHIBIT A
to
STANDING ORDER FOR JUDICIAL SETTLEMENT CONFERENCES:
CONFIRMATION OF SETTLEMENT FORM**

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

<p>IN THE MATTER OF:</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p style="text-align: center;">Complainant(s),</p> <p style="text-align: center;">v.</p> <hr style="border: 0; border-top: 1px solid black; margin-top: 5px;"/> <p style="text-align: center;">Respondent(s).</p>	<p>ALS Case No.: _____</p> <p>Settling ALJ:</p> <hr style="border: 0; border-top: 1px solid black; margin-top: 20px;"/>
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CONFIRMATION OF SETTLEMENT

The undersigned parties to the above-captioned case participated in a judicial settlement conference on the following date(s): _____.

As a result of their efforts, the undersigned parties were able to reach an agreement on all material terms in dispute between or among them, including at least the following (all of which were either resolved or acknowledged as non-material at the judicial settlement conference):

1. The total amounts of any monies or attorneys' fees to be paid in settlement, including the identities of all parties that are required to pay and receive such monies;
2. Any material terms governing the transfer of monies to be paid in settlement, including timing, terms, or other conditions precedent;
3. Any material, non-monetary settlement terms upon which a party insisted as a condition of settlement; and
4. Any other material terms upon which a party insisted to resolve the case at the judicial settlement conference.

While the parties may elect to create a more comprehensive written agreement that further memorializes the specific settlement terms enumerated above, their signatures or those of their legal representatives below confirm that all such material terms were raised, discussed, negotiated, and agreed to as of the conclusion of the judicial settlement conference held in their case. Where applicable, the parties have also identified the specific party that will prepare the initial draft of any further written agreement that memorializes their compromise.

By signing below, the parties understand and acknowledge that the Settling ALJ will enter an order (using this form as confirmation) that all material terms in dispute have been resolved between or among the undersigned parties in connection with this case. The parties have also been advised that as a result of their settlement, no subsequent public hearing of their case will occur, even if a party later wishes to withdraw from the settlement reached. Unless the parties submit their settlement to the Human Rights Commission for approval, this administrative court will not have jurisdiction to enforce the settlement once this case has been voluntarily dismissed.

AGREED TO:

Complainant or Legal Representative:

Signature: _____

Print Name: _____

Title: _____

Date: _____

AGREED TO:

Respondent or Legal Representative:

Signature: _____

Print Name: _____

Title: _____

Date: _____