

Georgia's Experimental Superior Court Judicially Hosted Settlement Conferences Proposed Rules

Introduction.

Due to increasing caseloads, the poor economy and the subsequent loss of funding for Georgia's Senior Judge Program our judiciary needs to proactively consider innovative case management solutions. Judicially Hosted Settlement Conferences may offer our courts another effective tool to relieve their backlog of pending cases. The JHSC is not intended to be in competition with or replace current ADR programs and services. The following information is solely provided to describe the nature of JHSC and to offer individual jurisdictions helpful program development guidelines.

Description.

A Judicially Hosted Settlement Conference (JHSC) is a confidential, non-binding process in which a settlement judge acts as a neutral mediator/evaluator of the case. Each side has the opportunity to present a brief summary of its evidence, legal theories and settlement desires. The settlement judge will assist the parties in settlement negotiations by assessing the strengths and weaknesses of each side's case. The settlement judge has no decision making authority and is in no way acting in lieu of the assigned judge.

In a settlement conference the settlement judge facilitates the parties' efforts to negotiate a settlement. Some settlement judges use mediation techniques in the settlement conference to improve communication among the parties, probe barriers to settlement, and assist in formulating resolutions. The parties are under no obligation to settle any matters at the settlement conference.

Referral to a Settlement Conference.

The Court may refer a case to a settlement conference on its own initiative, or upon stipulation of all of the parties involved in a case. The Court or parties will notify the appropriate judicial administrative district office of the referral. The District Court Administrator will maintain a list of approved settlement judges and will appoint a judge to the case based on availability, expertise, and logistical considerations.

Request of a Party.

For cases assigned to a local ADR program, at any time after the referral to ADR, a party may file with the ADR program a request for a settlement conference in lieu of ADR. The ADR program will notify the appropriate judicial administrative district of the case. In cases that have not been referred to an ADR program, a party may file such a request or the court can order parties to attend and participate at any time after the action has commenced. The parties may stipulate to a preference for one or more particular judges. The judicial administrative district office will make the appointments of the

settlement judge to each case and will attempt to honor the parties preference, subject to the availability of the requested judge.

Directives from the Settlement Judge.

Within any constraints fixed by the referring judge, the settlement judge shall determine a location and notify the parties and the district of the time and date of the settlement conference. The settlement conference or a status meeting shall be held within 60 days of assignment. The settlement judge or the judicial administrative district office shall notify the parties of his or her requirements for pre-conference submissions and for attendance at the settlement conference.

Unless the settlement judge otherwise specifies, “attendance” at a settlement conference is governed by the following:

- a) Corporation or other entity. A party other than a natural person (e.g., a corporation or an association) satisfies this attendance requirement if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.
- b) Government Entity. A unit or agency of government satisfies this attendance requirement if represented by a person who has, to the greatest extent feasible, authority to settle, and who is knowledgeable about the facts of the case, the governmental unit’s position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements. If the action is brought by the government on behalf of one or more individuals, at least one such individual must also attend.
- c) Insurers. Unless excused by the settlement judge, insurer representatives are required to attend in person if their agreement would be necessary to achieve a settlement.

Settlement Conference Confidentiality

- a) Confidential Treatment. Except as provided by a case-specific order or in subdivision (b) of this local rule, this court, the settlement judge, all counsel and parties, and any other persons attending the settlement conference shall treat as “confidential information” the contents of any written settlement conference statements, anything that happened or was said, any position taken, and any view of the merits of the case formed by any participant in connection with any settlement conference. “Confidential information” shall not be:
 - i. Disclosed to anyone not involved in the litigation;
 - ii. Disclosed to the assigned judge; or
 - iii. Used for any purpose, including impeachment, in any pending or future proceeding in this court.
- b) Limited Exception to Confidentiality. This rule does not prohibit:
 - i. Disclosures as may be stipulated by all parties;
 - ii. Any participant or the settlement judge from responding to an appropriate request for information duly made by persons

- authorized by the court to monitor or evaluate the court's JHSC program; or
- iii. Disclosures as are necessary to preserve the court's capacity to enforce lawful orders or to discipline contumacious conduct, or as are otherwise required by law.

Settlement Conference Memoranda.

At least five (5) days prior to the settlement conference, each party shall furnish the settlement judge with a separate memorandum. If service is made by mail, all papers must be mailed not less than ten (10) days before the hearing date. The memorandum does not have to be copied to the opposing side(s). Each memorandum shall be less than five (5) pages long and shall address the following:

- 1) a general description of the issues in the lawsuit, and the positions of each party with respect to each issue;
- 2) a general description of the evidence that will be presented by each side with respect to each issue;
- 3) a summary of the settlement negotiations that have previously occurred;
- 4) an assessment by each party of the anticipated result if the matter did proceed to trial; and
- 5) any other information each party believes will be helpful to the settlement process.

No part of any settlement conference memorandum shall be admissible at trial.

Notification of Settlement or Continuances.

- a) Settlement prior to the conference. If a case is settled, the plaintiff must immediately give the court and the settlement judge written notice. The only time a hearing set by the settlement judge may be taken off of the calendar is when the plaintiff advised the court that the case has been settled. Failure to advise the settlement judge at least five business days before the settlement conference that it will not proceed as scheduled, for any reason is a violation of these local rules. In addition, any party or attorney who fails to attend a settlement conference risks having their complaint dismissed or their answer stricken and default judgment entered. The settlement judge will notify the judicial administrative district office by submitting the settlement report no less than ten (10) days after the notification of the settlement.
- b) Settlement at the conference. If the case settles at the settlement conference, the parties will prepare a settlement memorandum capturing the essence of their agreement before adjourning the conference; thereafter, it is the plaintiff's responsibility to reduce the memorandum to a formal written agreement within three (3) business days. The plaintiff should send the agreement to the settlement judge and opposing counsel. Opposing counsel shall have three (3) business days to sign the agreement, file with the court and copy all parties.

- c) Continuances. At the agreement of all parties and the settlement judge, the conference can be continued as needed.
- d) If a settlement conference is cancelled with less than forty eight (48) hours notice, the settlement judge may charge for up to two (2) hours of his or her time. If a party is a no-show at the settlement conference, the settlement judge may charge the no-show party for up to three (3) hours of his or her time.

At the conclusion of the JHSC, the settlement judge must fill out a JHSC report. The report must be received by the appropriate judicial administrative district office within 10 business days.

Payment of Settlement Judge

The rate of payment will be determined by a majority vote of the approved participating settlement judges residing within that district. The base rate can be changed at any time with a majority vote of the district's participating settlement judges. In certain cases, special circumstances may dictate a variance in the rate which shall be pre approved in writing by all parties. Settlement judges may charge the parties from the time the conference is scheduled to start until the conclusion of the conference. All administrative activities and travel will be included in the hourly rate.

Requirements to be a Settlement Judge

A settlement judge must:

- 1) Be registered with the State Office of Dispute Resolution Office as a general civil mediator.
- 2) Have successfully completed the JHSC training offered by ICJE or the Judicial Administrative Districts.
- 3) Have been appointed as Senior Superior Court Judge.

Program Evaluation

Each district will maintain a database of the JHSC cases and will perform periodic evaluations to determine the effectiveness of this program.