

THE SETTLEMENT SERIES: PART 4

Don't Forget the Small Stuff

Keep details in mind when prepping for a settlement conference

By Lawrence R. Jones

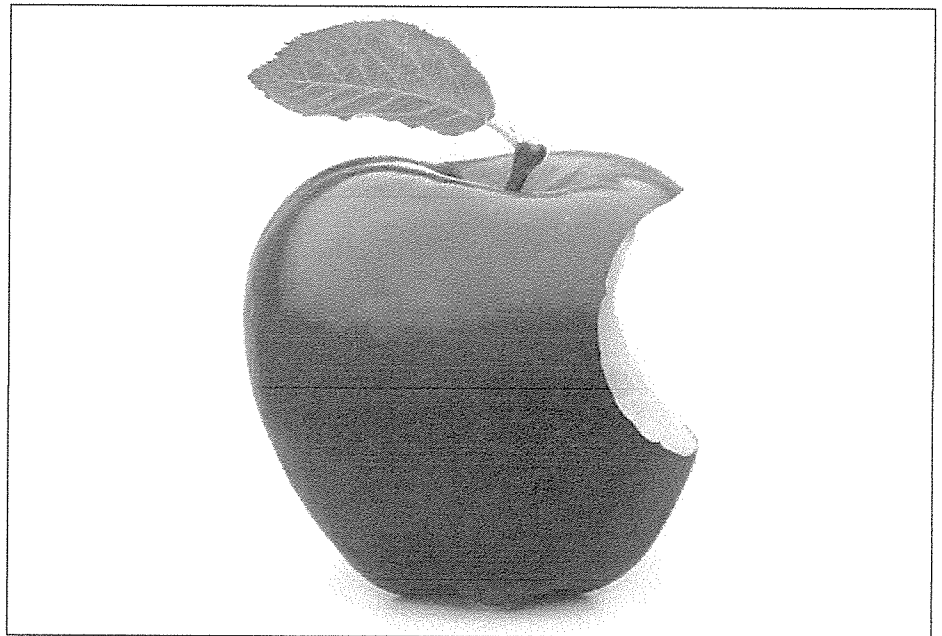
Editor's Note: This is the fourth article in a special, 10-part weekly series on settlement of litigation.

Preparing for a settlement conference is similar to preparing for a job interview. Sometimes, the little details or "small stuff" can impact the ultimate success of the entire event. The following are five points which may warrant advance attention during the planning stages for a settlement conference.

Scheduling the Conference

Different attorneys have different views on when an initial settlement conference should take place. Some wait until discovery is complete, based on the theory that it is often difficult to discuss resolution until all relevant information has been exchanged through interrogatory questions,

Jones is a former Superior Court Judge in Ocean County. He retired from the Judiciary in 2017 and now practices mediation and arbitration.



notices to produce documents and depositions.

Other lawyers, however, may schedule a conference as early as possible in a case, and find significant potential value in doing so. First, an early conference may help the parties energetically jumpstart a mutual mindset toward settlement rather than ongoing contentious litigation. Second, the parties may stipulate and agree to much more than was originally anticipated. Third, if a case is not

yet ripe for complete settlement, the parties may often still benefit from at least attending an initial conference to discuss either general ideas for possible resolution (perhaps subject to receipt and review of any outstanding documentation), or address issues that do not need further discovery. The parties can thereafter always schedule a follow-up conference as necessary, either when discovery is complete or at any other time as agreed, while working

progressively and constructively toward settlement.

Dates and Times

It is often beneficial to plan for a conference to start at a reasonably early hour, such as between 9:00 and 10:00 a.m. Studies show that people generally think most clearly and freshly in the morning, after a good night's sleep. Further, since one can never truly know precisely how much time will be necessary at a conference, it is helpful when everyone can clear their schedules in advance for the bulk of the day when possible. Understanding that lawyers and clients often have very busy schedules, there are cases where parties are actually making positive and valuable progress in a settlement conference, only to have such newfound momentum extinguished because someone has to leave the conference early. Such situations are often avoidable with reasonable advance planning.

It is also helpful for an attorney to emphasize to his or her client, in advance, the importance of showing up on time to a scheduled settlement conference. One of the most self-destructive moves a litigant can make is to arrive significantly late, while making the other party waste time and money waiting around. Since settlement usually depends on the mutual and respectful cooperation of both parties,

significant tardiness may easily be taken by the waiting party as a sign of disrespect, which in turn may start the settlement conference off on the completely wrong foot.

Location: Courthouse vs. Law Office

The overwhelming majority of settlement conferences take

place in one of two locations: (A) a conference room at the courthouse itself, or (B) the law office of one of the attorneys of record in the case. While some may feel that the choice of venue is irrelevant, there are practical reasons to devote some degree of thought to the issue, and to consider the comparative pros and cons that may render one location more suitable than the other in a given matter.

The courthouse may be a preferable location when the parties want to potentially place a settlement on the record and conclude the entire litigation the same day as the conference. For example, if a dispute has limited issues, and where it is feasible or likely that the case may resolve after only a few hours (or less) of cooperative conferencing,

it may make sense to conduct the conference at the courthouse. There is also the further possibility that the attorneys may have the opportunity, if necessary, to conference a case in chambers with the judge if the court's schedule so permits. Such an opportunity can,

in some cases, appropriately assist the attorneys in bringing a disputed matter to a conclusion.

On the other hand, a frequent downside of conferencing at the courthouse is that the conference rooms tend to be small. Further, there are often dozens of other litigants walking and talking outside the conference room on unrelated business, which may make some litigants feel less comfortable than they would be in the more private setting of a law office. Also, there may be limited seating for parties waiting outside the conference room while the attorneys are caucusing inside.

Moreover, a courthouse generally closes at 4:30, while a private law office usually has greater discretion in staying open later when necessary. This distinction can be

It is important to consider details such as what your client should wear, and lunch or snacks to keep everyone going.

particularly important in a case where the conference starts in the afternoon. For example, there are cases where parties are “close to” settlement in a courthouse conference room, only to have the process cut short at 4:29 p.m. because the building is shutting down.

Another thought to consider is that, in some situations, access to computer printers may be greater in a law office than in a courthouse conference room. This point may become an issue relative to preparing, revising and printing drafts of proposed settlement agreements for parties to review during an ongoing conference.

If counsel jointly decide to hold the four-way in a courthouse, it is wise to check in advance with court staff as to the actual availability of a conference room. In this respect, it is generally, advisable to avoid scheduling a courthouse conference on a motion Friday, when there is a heightened likelihood that the court will be filled with dozens of attorneys competing for use of limited conference rooms at the same time.

Dress Code

A litigant who has never previously attended a settlement conference might have little idea how to dress for the event, and may

therefore have questions regarding same. As there are no hard and fast rules regarding dress codes for settlement conferences, there is often logic in advising a client to simply dress neatly but comfortably. Some people feel totally uncomfortable and restrained in “business attire,” while others do not even own such formal wear. Litigants tend to be somewhat stressed when attending a settlement conference, and any reasonable steps an attorney can take to reduce such stress may be helpful to creating a more comfortable environment for discussing settlement.

Food at Settlement Conference

While often overlooked in the planning aspects of a settlement conference, the issue of food is a relevant consideration. Some people come to a conference with no advance plan for lunch or snacks. But food helps people maintain endurance, energy, stamina and focus as they proceed through the negotiation process. In this respect, food can be an extremely important aid in psychologically helping parties feel more comfortable and relaxed, and perhaps more willing to keep working toward settlement with an open mind as well. Conversely, hunger can make people cranky and angry, which is not helpful at all.

In some cases, instead of a “lunch break,” and a 60 or 90 minute shutdown of the negotiations, the momentum of a conference may be maintained if plans are made for everyone to order in from a local food delivery service, so that all can eat while the conference continues to take place. Alternatively, by advance agreement, everyone can bring a bagged lunch for the same purpose.

If the conference takes place in the courthouse, the parties may of course briefly recess to the cafeteria. Counsel may also wish to check with court staff to confirm if the judge, in special circumstances, might allow the parties and counsel to bring lunch into a conference room, to keep the orderly flow of the settlement negotiations going forward (if all parties consent to such an arrangement).

Separate from lunch, periodic snacks help also people feel better by boosting energy and decreasing tension. For this reason, a lawyer who hosts a settlement conference in his or her office may consider setting out some edible hospitality such as fruit, chips, peanuts, miniature chocolates, and/or soft drinks. Such a display is quite likely to be met with happy gratitude by litigants and counsel alike, and may further help set the stage in a meaningful way for positive settlement negotiations. ■