

Hon. Morton Denlow

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JUDGE MORTON DENLOW'S MEDIATION PROCEDURES

The Parties should fully explore and consider settlement at the earliest opportunity. Early consideration of settlement can prevent unnecessary litigation. This allows the Parties to avoid the substantial cost, expenditure of time, and stress that are typically a part of the litigation process. Even for those cases that cannot be resolved through settlement, early consideration of settlement can allow the Parties to better understand the factual and legal nature of their dispute and streamline the issues to be litigated.

Consideration of settlement is a serious matter that requires thorough preparation prior to the Mediation Conference. Set forth below are the procedures Judge Denlow will require the Parties to follow and the procedures Judge Denlow typically will employ in conducting the Mediation Conference.

A. FORMAT

1. PRESETTLEMENT CONFERENCE EXCHANGE OF DEMAND AND OFFER.

A Mediation Conference is more likely to be productive if, before the Conference, the Parties exchange written settlement proposals.

Accordingly, at least twenty-one (21) days prior to the Mediation Conference, Plaintiff's Counsel shall submit a written itemization of damages and settlement demand to Defendant's Counsel with a brief mediation statement to explain why such a settlement is appropriate. A copy should be sent to Judge Denlow.

No later than seven (7) days prior to the Mediation Conference, Defendant's Counsel shall submit a written offer to Plaintiff's Counsel with a brief mediation statement to explain why such a settlement is appropriate. A copy should be sent to Judge Denlow.

On occasion, this process will lead directly to a settlement.

For materials 15 pages or less, they can be emailed to Judge Denlow at mortdenlow@gmail.com. For materials over 15 pages, please contact the Case Manager, Deborah Stewart, at dstewart@jamsadr.com or 312-655-9192 for the home delivery address.

2. ATTENDANCE OF PARTIES REQUIRED. Parties with full and complete settlement authority are required to personally attend the Conference.

An insured Party shall appear by a representative of the insurer who is authorized to negotiate, and who has *authority to settle the matter up to the limits of the opposing Parties' existing settlement demand*.

An uninsured corporate Party shall appear by a representative authorized to negotiate, and who has *authority to settle the matter up to the amount of the opposing Parties' existing settlement demand or offer*.

Having a Client with authority available by telephone is *not* an acceptable alternative, except under the most extenuating circumstances.* Because Judge Denlow generally sets aside at least eight hours for each Mediation Conference, it is impossible for a Party who is not present to appreciate the process and the reasons which may justify a change in one's perspective towards settlement.

3. MEDIATION FORMAT. Judge Denlow will generally use a mediation format: that is, a joint session with opening presentations by Judge Denlow and each Party followed by private caucusing by Judge Denlow with each Party. The lawyers and the Party representatives are expected to be fully prepared to participate. All Parties are encouraged to keep an open mind in order to re-assess their previous positions and to discover creative means for resolving the dispute.

4. STATEMENTS INADMISSIBLE. The Parties are requested to address each other with Courtesy and respect. Parties are encouraged to be frank and open in their discussions. As a result, statements made by any Party during the Mediation Conference are not to be used in discovery and will not be admissible at trial.

B. ISSUES TO BE DISCUSSED

Parties should be prepared to discuss the following at the Mediation Conference:

1. What are your goals in the litigation and what problems would you like to address?

What do you understand are the opposing side's goals?

2. What issues (in and outside of this dispute) need to be resolved?

What are the strengths and weaknesses of your case?

*The purchase of an airplane ticket is not an extenuating circumstance.

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 points of agreement and disagreement between the Parties?
Factual? Legal? Financial?
5. What are the impediments to settlement?
Financial? Emotional? Legal?
6. Does settlement or further litigation better enable you to accomplish your goals?
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 lien holders or third parties who should be invited to participate in the Mediation Conference?

C. INVOLVEMENT OF CLIENTS

Parties and their lead Counsel are expected to appear at the Mediation Conference on the date and time set. For many Clients this will be the first time they will participate in a Mediation Conference. Therefore, prior to the Mediation Conference, Counsel shall provide a copy of these Mediation Procedures to the Client and shall discuss the points contained herein with the Client.

D. PREPARE FOR SUCCESS

In anticipation of a settlement, the Parties should review and be prepared to complete Judge Denlow's Settlement Checklist/Term Sheet at the conclusion of the Mediation Conference. Attached please find the Settlement Checklist/Term Sheet for review.

Should you have any questions, please contact the Case Manager, Deb Stewart, at 312-655-9192 or dstewart@jamsadr.com.

We look forward to a complete resolution of this case. Thank you.

Judge Morton Denlow (Ret.)