

Arizona Court of Appeals Division One Settlement Conference Policy

I. Introduction

The Court has established a Settlement Conference Program through which, in appropriate cases, a sitting Court of Appeals judge is assigned to work cooperatively with the parties and their counsel to attempt to resolve their dispute. The Court offers this service at no cost because it may help to conclude matters quickly and efficiently and may provide a more satisfactory result than can be achieved through continued litigation.

II. How the Court Selects Cases for the Program

Almost all civil cases are eligible for the Settlement Conference Program.

The Court selects cases for inclusion in the program by reviewing the trial court record and the Case Management Statement that Arizona Rule of Civil Appellate Procedure 12(d) requires an appellant to file with the Court. The Court also will solicit the parties' views concerning whether the issues on appeal or the underlying dispute might be amenable to settlement.

Alternatively, a party may ask that an appeal be included in the program by sending a request to SettlementProgram@appeals.az.gov. If requested, the Court will keep this communication confidential from the other parties to the appeal.

If the Court includes a case in the Settlement Conference Program, the Court will issue an order assigning the case to the program and staying the appeal until further order. The Court will not stay the payment of filing fees, posting of bonds, or filing notices of cross-appeal.

III. The Settlement Conference Process

Participation in the Settlement Conference Program typically will involve a two-step process: an assessment conference and, if appropriate, an in-person settlement conference.

A. Assessment Conference

Once the Court places a case in the Settlement Conference Program, it will order counsel to participate in an assessment conference with the assigned settlement conference judge to exchange information about the case, discuss settlement conference options, and decide whether to move forward with an in-person settlement conference. The initial assessment conference typically lasts between 30 to 60 minutes and includes a discussion of the case's litigation and settlement history.

Generally, the assessment conference will include only counsel, not parties, and the attorney with the most direct relationship with the client is expected to participate.

Depending on the case, parties may participate in subsequent conferences. Parties will always be required to attend in-person sessions.

Many factors are relevant to determining whether a particular case is appropriate for an in-person settlement conference, including:

- the parties' interest in participation;
- the certainty, or the possibility, that an appellate decision will not end the dispute;
- a desire by one or both parties to make or avoid legal precedent;
- the existence of other appeals that raise the same legal issue;
- the parties' desire to preserve a business or personal relationship;
- the existence of non-monetary issues;
- the possibility that a creative resolution might provide better relief than a court could fashion;
- a history of strong feelings by or between the parties that may have prevented effective negotiations;
- the possibility that one or all parties could benefit from a fresh look at the dispute;
- a desire to open and improve communication between the parties.

Additional conferences may be necessary before a consensus is reached about whether to proceed with an in-person settlement conference. Once there is a consensus, the Court will issue an order setting the date and time for the settlement conference.

If the Court determines it will not hold an in-person settlement conference, it will lift the stay and return the appeal to the regular court docket.

B. In-Person Settlement Conference

If all counsel and the assigned settlement conference judge agree to move forward in the process, the judge will schedule an in-person settlement conference to be held at the court. The parties and the attorney with the most direct relationship with the client will be required to participate.

The judge usually will order the parties to submit a settlement conference statement prior to the in-person conference. Typically, one portion of the statement is exchanged with the other party and sets forth a brief description of the factual and legal issues; a second, confidential, portion is submitted only to the settlement conference judge and contains information about each party's goals at the settlement conference.

Working with the settlement conference judge, the parties will determine what issues will be discussed at the in-person settlement conference and how those discussions will proceed. In some cases, the focus will be on the legal issues and possible outcomes of the appellate process. In other cases, it may be on rebuilding relationships or joint problem-solving. Sometimes the settlement conference judge will facilitate direct discussions between the parties; other times he or she will act as an intermediary, shuttling back and

forth between them. The settlement conference judge will try to resolve these various process issues in a manner that best serves the interests of the participants.

The settlement conference judge will facilitate negotiations among the parties to help them devise a mutually acceptable resolution. The judge will ask questions, reframe problems, facilitate communication, assist the parties to understand each other, and help identify creative solutions. The settlement conference judge will not take sides, render decisions, offer legal advice, or reveal confidences.

Depending on the outcome of the in-person settlement conference, the settlement conference judge may order an additional conference, order the parties to file a stipulation to dismiss the appeal, or direct that the case be returned to the regular court docket.

IV. Confidentiality

All settlement conference proceedings are confidential, and not discoverable, and are inadmissible in evidence in any judicial proceeding. A party to an appeal selected for the program may not communicate to a third person any information that he or she learns in the course of the program, except to the extent required by law or compelled by legal process.

Documents, e-mails, and other correspondence sent only to the Settlement Conference Program will be maintained separately from the Court's electronic filing and case management system and will not be made part of the public docket.

Any person who participates as a settlement conference judge will not later participate in any way in the consideration or disposition of the appeal.

Settlement conference judges, attorneys, and all other court employees involved in the program are absolutely immune from suit for all conduct in the course of their official duties.