

JUDICIAL SETTLEMENT GUIDELINES

The following are guidelines for judicial settlement ethics:

1. **Separation of Functions**
Where feasible, the judicial functions in the settlement and trial phase of a case should be performed by separate judges.
2. **Impartiality and Disqualification**
A judge presiding over a settlement conference is performing judicial functions and, as such, the applicable provisions of the code of judicial conduct, particularly the disqualification rules, should apply in the settlement context.
3. **Conference Management**
Judges should encourage and seek to facilitate settlement in a prompt, efficient, and fair manner. They should not, however, take unreasonable measures that are likely under normal circumstances to cause parties, attorneys, or other representatives of litigants to feel coerced in the process. The judge should take responsibility in settlement conferences.
4. **Setting Ground Rules on Issues Such as Confidentiality, Disclosure and Ex Parte Communications**
In settlement conferences, judges should establish ground rules at the onset, either orally or in writing, informing parties and their attorneys of the procedures that will be followed. The rules should include ground rules governing issues such as confidentiality, disclosure of facts and positions during and after conferences, and ex parte communications.
5. **Focusing the Discussions**
A judge should use settlement techniques that are both effective and fair, and be mindful of the need to maintain impartiality in appearance and in fact.
6. **Guiding or Influencing the Settlement**
The judge should guide and supervise the settlement process to ensure its fundamental fairness. In seeking to resolve disputes, a judge in settlement discussions should not sacrifice justice for expediency.
7. **Sanctions or Other Penalties Against Settlement Conference Participants**
A judge should not arbitrarily impose sanction or other punitive measures to coerce or penalize litigants and their attorneys in the settlement process.

(taken from Goldschmidt and Milford, *Judicial Settlement Ethics*, American Judicature Society, 1996, grant SJI-95-03C-082 from the State Justice Institute)