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When, Why & How to Settle a Civil Case

October 25, 2018



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Also, this class is limited to general civil cases in state court.



What is settlement?

Alternative to litigation/trial

“ADR” = Alternative Dispute Resolution

Resolving a legal dispute by agreement, instead of a decision by a judge or jury.



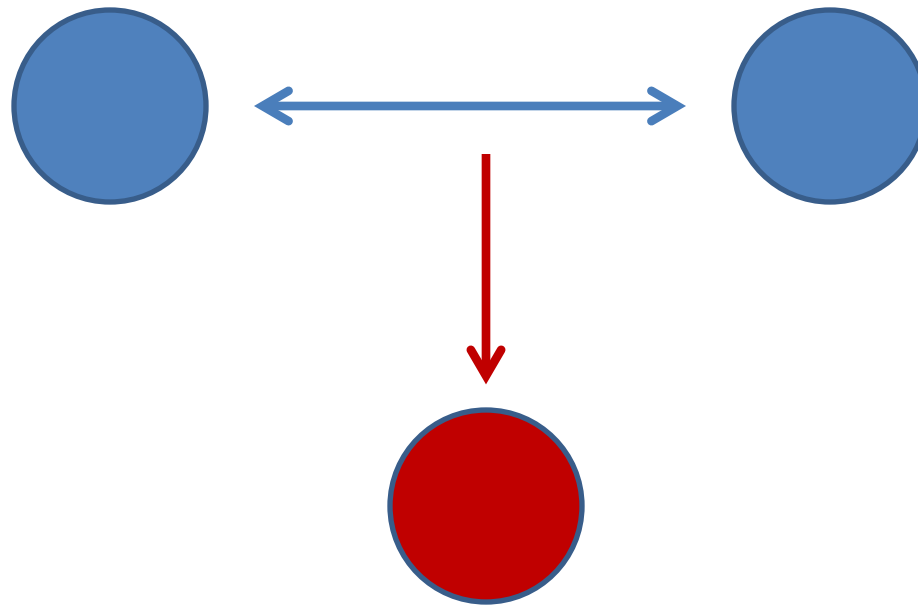
What is settlement?

Main types:

- Negotiation
- Day-of-trial (last chance)
- Pre-day of trial:
 - voluntary mediation; MSCs
 - PI – special program
- ODR! Online, phone, computer
- Vendor Res List; DRPA programs; DCBA; other options



The role of a settlement officer or mediator



Why do courts strongly encourage settlement?

- Less time -- for court and litigants
 - Few, if any, court appearances
- Less money for court and litigants
- Less stress
 - Outside the courtroom; private; informal
 - Rules of evidence, court procedures don't apply
- More control over the case
- Customize agreements – including things a judge couldn't order



How to frame your case in the best light

- What is sympathetic about your case?
- What is sympathetic about the other side's case?
- Subjective vs. objective



Whether settlement makes sense for your case

- Merits of the case
- Collectability of a judgment
- Cost of litigating
- Right to recover attorneys' fees
- Judicial vs non-judicial outcomes



How to prepare for settlement process

- Legal research:
 - elements of the case
 - right to jury
 - remedies available
- Factual research: strengths and weaknesses
- What do you want?
- What does the other side want?
- Try arguing the other side of the case



How to negotiate effectively

- Be prepared
 - To present your case
 - To address the weaknesses in your case
- Use of inflammatory language
- Body language and demeanor
- Understanding your opponent
- In person or by written exchange



When to begin discussions

- Do you know the facts yet?
- How expensive will it be to ascertain them?
- Are there portions of the case that can/will be resolved prior to trial?
 - Partial settlement
- Has something happened in the case that gives “momentum” to one side or the other?



How to decide what is a fair result

- Percentage method: likelihood of success x value of outcome
- Cost of litigating
- Human/emotional cost
- Prevention of future harm (to you or others)
- Preference for non-judicial remedies
- Recognize that emotional needs are seldom met in litigation
- Do a cost-benefit analysis



Documenting your settlement so you are protected

- Oral agreement alone – NO!
- Oral agreement placed on the record in court
- Written agreement
- Written agreement approved by court
 - as “good faith settlement”
- With or without continuing jurisdiction
- Judgment



Documenting your settlement so you are protected

- Is your settlement enforceable?
- Is it specific?
- Is it clear what each side is obligated to do?
- Terms:
 - Money
 - Timing
 - Jurisdiction
 - Remedies for non-compliance



Documenting your settlement so you are protected

- Enforcement
- What happens if one side violates the settlement agreement?
 - Reinstates case/claim?
 - Monetary damages? Collateral?
 - Right to declaratory relief?
 - CCP §664.6 motion requirements



When to get help

- Can you do this on your own?
- Ask for a Mandatory Settlement Conference (MSC)?
- Consider finding a skilled mediator who can help
 - document
 - identify the material terms
- Ask at the Reference Desk for resources and assistance



Questions?



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