

JUDICIAL SETTLEMENT CONFERENCES

PREFACE	1
PROCESS	1
Process	1
Interest based bargaining	2
“The time” for settlement	3
Counsel’s role	4
Client focus	4
Understanding the possibilities	5
The judge’s control	6
PREPARATION	9
Pre-conference preparation	9
Multi-party conferences	11
Persuasion	11
Preparing the client	13
Batna	15
Body and other language	15
Case management	16
Preparing opening statements	16
Judicial expectations of opening statements	17
Preparing documents	17
Expert witnesses	18
OBJECTIVES	21
Environment and procedure	21
Initial objectives	22
Issue definition	23
Emotional baggage	24
STRATEGIES	27
Negotiation strategies	27
Positional bargaining	27
An alternative strategy – interest based bargaining	29
Settlement options	30
Fractional analysis of positions	30
Issue linkage	31
Option assessment	32
Ethics	33
Judicial suggestions and advice	34
OUTCOMES	37
Agreement	37
Disagreement	37
APPENDIX 1	39
High Court Jurisdiction and background	39
Preparation for a conference which allocates judicial settlement conference hearing	40
The settlement conference directions	42
The process – preparation for the conference – participation at the conference – the solutions	43
The settlement agreement	43
APPENDIX 2	45
High court standard settlement conference directions	45
Information	45
Questions	45
APPENDIX 3	47
Hot Tips	47
The four Ps	47

The Cast	47
The environment	47
Agreement	48
Note keeping	48
APPENDIX 4	49
Settlement Agreement	49
What is a settlement agreement?	49
Why do the parties need a settlement agreement?	49
When is the settlement agreement prepared?	49
Who signs the settlement agreement?	49
How do I draft a settlement agreement?	49
Full & Final Settlement	50
Notice of Discontinuance	50
Costs	50
Admission or No Admission of Liability	51
Confidentiality	51
Indemnity	51
APPENDIX 5	53
Tool Kit	53
Full Authority to Settle	53
Excellent Communication Skills	53
Flexibility	53
Bring the right equipment	53
APPENDIX 6	55
Hypothetical Claim	55