

PROBATE SETTLEMENT OFFICER TRAINING PROGRAM MARCH 18, 2014



Both sides were at a loss as to how to make their presentations if they couldn't tweet.

SETTLEMENT OFFICER TRAINING PROGRAM

Special Events Center – Stanley Mosk Courthouse

Tuesday, March 18, 2014; 12:30 – 4:30 p.m.

AGENDA

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| 12:00 – 12:30 p.m. | Registration |
| 12:30 – 12:35 p.m. | Welcome/Introductions
Judge James A. Steele |
| 12:35 – 12:50 p.m. | Overview/Mechanics/Status of the Settlement Conference Program
(PowerPoint Presentation)
Judge James A. Steele |
| 12:50 – 1:20 p.m. | Salient Differences Between Mediations and Settlement Conferences: What
That Means to You As A Settlement Officer including Applicability of Evid. Code
§§ 1115 and 1152 regarding Confidentiality
Myer Sankary, Esq., Kira Masteller, Esq. and Howard L. Horwitz, Esq. |
| 1:20 – 1:30 p.m. | Advanced Planning To Increase Your Likelihood Of Settlement Conference
Success
Blake Rummel, Esq. and Andrea VanLeesten, Esq. |
| 1:30 – 1:45 p.m. | 5 Quick Tips On Handling Cases Involving Self-Represented Litigants
LeAnne Mailian, Esq. and Yacoba (Jacki) Feldman |
| 1:45 – 2:05 p.m. | Break (includes “Guess That Judge” slideshow) |
| 2:05 – 3:05 p.m. | Settlement Tips From the Masters: How To Increase the Odds of Settling The
Small, But Legally or Factually Complicated Case, In Short Order
Hon. Aviva K. Bobb (Ret.) and Hon. Arnold H. Gold (Ret.) |
| set up/transition | |
| 3:15 – 3:35 p.m. | Ethical Considerations in The Settlement Conference Context
Hon. David J. Cowan and Hon. Daniel S. Murphy |
| 3:35 – 4:20 p.m. | “Closing the Deal” (including how to finalize and properly document the
settlement)
Joel M. Simon, Esq., Lawrence Lebowsky, Esq. and Lynn Hinojosa, Esq. |
| 4:20 – 4:30 p.m. | Closing Comments/Presentations |
| 4:30 – 5:00 p.m. | Bar-Bench Mixer (Department 11)
Light Refreshments |

BIOGRAPHICAL INFORMATION

MODERATOR: JUDGE JAMES A. STEELE

Judge Steele sits as a trial judge in Department 11 of the Central District Probate Court. He was admitted to the bar in 1977 and was appointed to the bench in March 2007. He was, prior to his current assignment, sitting in a combined probate/unlimited (general jurisdiction) civil assignment. Before his appointment he practiced in the private sector for 29 years in corporate law and business litigation. Judge Steele regularly serves as a member of the probate faculty for CJER, the body which is responsible for training judicial officers on a statewide basis and has been published in, among other areas, probate litigation, attorneys' fees, fiduciary investment practices, and special needs trusts. Most recently, Judge Steele chaired the committee which developed, and has now very successfully implemented, the Central District Probate Settlement Conference Program. In addition to his law degree, Judge Steele also has an advanced degree in business as well as post graduate training in tax law.

HON. DANIEL S. MURPHY sits as a trial judge in Department 29 of the Central District Probate Court. He was appointed Superior Court Judge for the County of Los Angeles in October, 2005 by Governor Schwartznegger. As an attorney, Judge Murphy served eighteen years as a municipal lawyer for the City of Long Beach where he handled both civil and criminal cases for the city. Judge Murphy has also been teaching Business Law and various paralegal courses at Cerritos Community College from 2002 to the present. He graduated UCLA in 1984 and thereafter attended Loyola Law School where he obtained his Juris Doctorate in 1987.

HON. DAVID J. COWAN sits as a calendar judge in Department 9 of the Central District Probate Court. He was appointed a Court Commissioner in September, 2005. Before joining the Probate Division in June 2013, Commissioner Cowan had been in a Family Law assignment at the Santa Monica Courthouse for six and a half years. Prior to going on the bench, he practiced business and real estate litigation for seventeen years; initially at Rogers & Wells and for eleven years at his own office. Commissioner Cowan received his B.A. degree from Columbia University and J.D. from University of California, Hastings College of the Law.

LYNARD C. HINOJOSA is a partner with the Los Angeles law firm of Hinojosa & Wallet LLP. His primary areas of expertise are in probate and trust litigation, probate administration and conservatorship. He has been appointed by the court, retained by private parties, and testified many times as an expert in probate, conservatorship and trust matters. He has been a member of the Executive Committee of the Los Angeles County Bar Association, Probate and Estate Planning Section, and is a past member of the Executive Committee of the State Bar Estate Planning, Trust and Probate Section. Mr. Hinojosa received his B.A. in 1964 from Yale University and his J.D. in 1969 from the University of California, Los Angeles School of Law.

LAWRENCE M. LEBOWSKY is Certified by the State Bar of California Board of Legal Specialization as a Specialist In Estate Planning, Trust and Probate Law. His practice focuses on fiduciary administration, tax planning, and estate planning, as well as litigation of contested probate matters. Mr. Lebowsky has served on the Estate Planning, Probate and Trust Law Advisory Commission to the State Bar of California Board of Legal Specialization and is a member of the Adjunct Faculty at Southwestern Law School teaching Federal Income Tax. Mr. Lebowsky holds his Bachelor's degree in Economics from UCLA, is a graduate of Southwestern Law School, and earned his Master of Laws (LL.M.) degree in Taxation from

Boston University School of Law. He is also admitted to the United States Tax Court and United States Court of Federal Claims.

BLAKE A. RUMMEL is a shareholder and director of Weinstock Manion, A Law Corporation, in Century City. Ms. Rummel graduated from Southwestern University School of Law's SCALE program in 1990, after receiving her B.A. in Political Science from UCLA. She practiced civil litigation and juvenile law for the first eight years of her career. Since 1998 her practice has centered exclusively in the areas of probate, conservatorship and trust litigation. Ms. Rummel is a frequent speaker and active in the Trusts and Estates Sections of the Beverly Hills and Los Angeles County Bar Associations.

MYER SANKARY is a full time mediator with ADR Services having mediated over 1,000 cases since 1996 involving a variety of areas of law and business. He is a specialist in probate mediation, with over 40 years of practice in the field of probate and estate planning. After graduating Harvard Law School in 1965, Mr. Sankary began practicing law in Beverly Hills with the firm of Wyman, Bautzer, Rothman & Kuchel. Mr. Sankary received a Lifetime Achievement Award from the ABA Solo and General Practice Committee, as well as the Outstanding Achievement Award from the State Bar Solo and Small Firm Committee and he received recognition as Super Lawyer in ADR for 2013 and 2014. Mr. Sankary has also been involved in the Straus Institute, Pepperdine Law School, Malibu, Dispute Resolution Training programs from 1996 to present. He serves as chairman of the San Fernando Valley Bar Mandatory Fee Arbitration program, has also served on the LASC ADR committee for 6 years and he is the author of the recently published article "Challenges of our Aging Population; Resolving Disputes Between Aging Parents and their Families" which appeared in the *Valley Lawyer*.

KIRA S. MASTELLER is a Shareholder at Lewitt Hackman Shapiro Marshall & Harlan. Ms. Masteller has worked in the legal field for 24 years, 14 years as a paralegal working in family law and estate planning/trust administration, and the past 10 years as an attorney focusing her practice solely on estate planning, estate and gift tax planning, trust administration and probate. Ms. Masteller is the immediate past chair of the Trust & Estates Executive Committee of the Los Angeles County Bar Association, acting Treasurer of the San Fernando Valley Bar Association and a Member of the Volunteer Probate Settlement Panel Committee. Ms. Masteller also serves as a Governor-appointed member of the Board of the California Prison Industry Authority.

HOWARD L. HORWITZ is a partner with Kibre & Horwitz LLP and a trusts/estates litigator with 30 years' experience. He is a member of the Executive Committee of the Trusts and Estates Section of the State Bar of California (Texcom). His published appellate decisions in the area include *Estate of Pryor*, 177 Cal. App. 4th 1466 (2nd Dist. 2009), rev. denied (Dec. 17, 2009) and *Pryor v. Pryor*, 177 Cal. App. 4th 1448 (2nd Dist. 2009). His article entitled "California's New Statutory Definition Of Undue Influence – Modernization Or Game Changer?" will appear in Volume 19, Issue No. 3 (Spring 2014) of the California Trusts and Estates Quarterly.

ANDREA G. VAN LEESTEN has been a sole practitioner since 1991 emphasizing Probate, Estates Trusts, Conservatorships & Elder Law. She is on the Probate Volunteer Panel of the Los Angeles Superior Court, has been a mediator since 2004 and is a current Probate Settlement Officer. Ms. Van Leesten is the author of "Elder Law for Solos" published by the GP Solo Magazine July/August 2013, Solo Small and General Practice Division of the American Bar Association and Chair of the Diversity Board. Ms. Van Leesten is a graduate of UCLA and Georgetown University Law Center

YACOB ("JACI") ANN FELDMAN is a sole practitioner in Woodland Hills where her practice is focused on estate planning, probate and conservatorship matters. Ms. Feldman has been practicing law for more than 30 years. She has lectured on estate planning and probate matters before groups of real estate professionals and for lawyers and paralegals as a part of continuing education programs. She is a member of the Los Angeles County Bar Association, San Fernando Bar Association and the State Bar of California. Ms. Feldman earned her B.A. from the University of California, San Diego, her J.D. degree from Hastings College of the Law – University of California, and her M.S.T. degree (Masters in Taxation) from Golden Gate University. Ms. Feldman serves as a volunteer mediator with the Probate Settlement Program and is a member of the Probate Volunteer Panel (PVP).

LeANNE E. MAILIAN is a sole practitioner with offices in Encino. Ms. Maillian has been practicing for over 35 years. Her practice emphasizes estate planning, trust administration and litigation, probate, conservatorship establishment, administration and litigation. She is a member of the Los Angeles County Superior Court Probate Volunteer (PVP) panel and has served as a volunteer mediator/settlement officer in the Los Angeles Superior Court settlement program for a number of years. Ms. Maillian has spoken at the PVP Training Program and to several professional organizations regarding estate planning, trust administration and conservatorships. She graduated from Loyola Law School. Ms Maillian is a former chair of the California State Bar Law Practice Management Section and of the State Bar Council of Section Chairs. She a former trustee and current member of the Los Angeles County Bar Association and a member of the San Fernando Valley Bar Association. Ms. Maillian is the current President of the Southern California Council of Elder Law Attorneys.

JOEL M. SIMON was admitted to the California Bar in 1978 and has extensive practice experience in transactional law and litigation including in fiduciary matters. Mr. Simon is a panel member for conservatorships and LPS conservatorships, having handled over 600 conservatorships including all aspects related thereto. He is a Member of the Los Angeles County Bar Association Professional Responsibility and Ethics Committee (1986-present), and served as its Chairman from 1993 to 1994. In addition, Mr. Simon served as an arbitrator for the Los Angeles County Bar Association Dispute Resolution Services where he heard fee arbitration disputes and since 2003 to present has served as Vice Chair of the Attorney-Client Arbitration and Mediation Services Executive Committee. In addition to being a certified mediator, he is on the approved panel of probate settlement officers as well as CAALA List of mediators. Mr. Simon graduated from California State University - Northridge, obtaining a M.A. in History (1970), and was an Instructor of American History, Political Science and Far Eastern History at Rio Hondo and Cerritos Colleges (1971-1975). He thereafter graduated *cum laude* from Whittier College of Law in 1978, where he later served as an Adjunct Instructor teaching Legal Research & Writing, was a founding member of the school's Law Review and was awarded the American Jurisprudence Award in Commercial Transactions and Constitutional Law



HON. AVIVA K. BOBB

Los Angeles County Superior Court, Retired

Recognized as a Daily Journal Top Neutral for five consecutive years (2009-2013), Judge Aviva Bobb is a versatile jurist with 30 years of experience in family law, probate, and civil litigation. Judge Bobb serves as a mediator, arbitrator, special master, and discovery referee at ARC. As Supervising Judge of the probate and family law departments over the past decade, Judge Bobb successfully conducted hundreds of settlement conferences and was recognized for developing innovative programs which increase access to the court system for parties and their families.

PRACTICE AREAS

Probate, Family Law, Law and Motion, Civil Litigation including Business, Employment, Medical and Legal Malpractice and Personal Injury.

CONFLICT RESOLUTION EXPERIENCE

Judge Bobb was elevated to the Superior Court in 1994 and handled civil matters until 1998, when she moved to family law. She served as Supervising Judge of both the family law department (2000-2004) and the probate department (2005-2009), where she presided over many high-profile and celebrity cases. She is known for stressing fairness and respect for all parties as well as promoting programs that help litigants make their way through the legal system.

Judge Bobb sat on the Municipal Court bench from 1980-1994, serving as Presiding Judge and handling a broad range of civil and criminal matters. She also served as an Associate Justice Pro Tem on the Court of Appeal in 1982.

Judge Bobb began her legal career as Executive Director and Staff Attorney for San Fernando Valley Neighborhood Legal Services and later served as Executive Director of the Legal Aid Foundation of Los Angeles.

EDUCATION & TRAINING

- J.D., 1971, Boalt Hall School of Law, University of California, Berkeley.
- B.A., 1967, Wellesley College

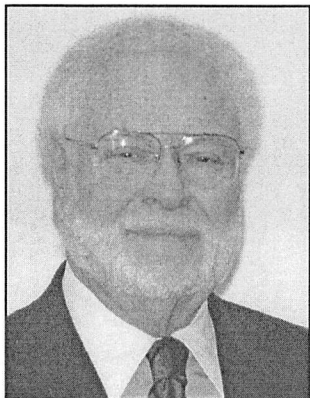
ORGANIZATIONS & ACHIEVEMENTS

- **Recipient:** Los Angeles County Bar Association, Trust and Estates Section, Judicial Excellence Award; Beverly Hills Bar Association, Trust and Estates Section, Timothy Whitehouse Award; Los Angeles County Commission on Women, Woman of the Year, Law/Public Safety; Elder Financial Protection Network, Sentinel Award; Harriett Buhai Center for Family Law, Zephyr M. Ramsey Award; Levitt & Quinn, Outstanding Community Service Award; Aranda Access to Justice Award, Judicial Council of California; Judge of the Year, National Child Support Enforcement Association; Judicial Officer of the Year, State Bar of California Award, Family Law Section; Distinguished Jurist Award, American Academy of Matrimonial Lawyers; Spencer Brandeis Award, Los Angeles County Bar Association, Family Law Section
- **Former board member:** Bet Tzedek Legal Services; Public Counsel; Western Center on Law and Poverty; Women Lawyers Association of Los Angeles
- **Frequent presenter** to judicial and civic groups

Judge Bobb is available throughout California.



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HON. ARNOLD H. GOLD

Los Angeles County Superior Court, Retired

Previously named a Top Neutral by the *Daily Journal* for five consecutive years, Judge Arnold Gold was listed in the publication's prestigious "Top Master" category in 2013. One of California's most successful probate mediators, Judge Gold received the Treat Award for Excellence from the National College of Probate Judges in 2006. Since he retired from the bench, he has conducted more than 1,000 probate mediations with an over 90% settlement rate.

PRACTICE AREAS

Probate & Family Law, Elder Abuse, Real Property, Professional Liability, Insurance Coverage, Business, Employment, Intellectual Property, General Civil Litigation

CONFLICT RESOLUTION EXPERIENCE

In addition to his probate work, Judge Gold has served as a referee, judge pro tempore, mediator or arbitrator in numerous large and complex civil and family law cases. Judge Gold's clients describe him as a mediator who "does not simply shuttle between conference rooms with the next offer" but instead "works the parties and their attorneys, challenging their positions and preconceived notions."

During nearly 13 years on the bench, Judge Gold handled a wide range of civil litigation. He spent many years assigned to Fast Track civil trials and handling family law disputes, and served as Supervising Judge of the Probate Department. As a Justice Pro Tempore for Division 7 of the Second District Court of Appeal in 1996, Judge Gold authored the landmark insurance coverage opinion in *Stonewall Insurance Company v. City of Palos Verdes Estates*, and the comprehensive probate fee opinion in *Estate of Hilton*. Judge Gold is an active member of numerous judicial and bar committees and associations. An expert on civil, family law and probate issues, he is a frequent lecturer on those topics for a multitude of organizations. He has written extensive materials for lawyers and the judiciary on references to referees.

ORGANIZATIONS & ACHIEVEMENTS

- Co-author of the Matthew-Bender Handbook on Depositions; lead author of the five-volume Thomson West *California Civil Practice* Module on "Probate and Trust Proceedings;" author of several chapters for California CEB publications
- Listed as one of the "Best Lawyers in America" (first edition)
- Member or former member: Los Angeles County Bar Association Board of Trustees; Beverly Hills Bar Association Board of Trustees; Judicial Council Probate and Mental Health Advisory Committee; State Bar of California; American Bar Association
- Former President, Los Angeles County Law Library Board of Trustees

EDUCATION & TRAINING

- J.D. (1955), Stanford Law School; Managing Editor, *Stanford Law Review*.
- B.A. (1953), *cum laude*, Stanford University.

Judge Gold is available throughout California.



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Pro Bono Probate Settlement Program

OVERVIEW

The Pro Bono Probate Settlement Program (the “Program”) is intended to provide to parties with probate, trust, estates, guardianship, conservatorship or similar matters which are pending before one of the Central District Probate courts an opportunity to resolve their cases. The Program is staffed with practitioners experienced in Probate Court matters who volunteer their time to assist in the Program (“Attorney Volunteers”). To become an Attorney Volunteer within the Program, the attorney submits an application for consideration to a committee comprised of members of various Bar Associations located throughout Los Angeles County (the various Bar Associations, their respective committees and the members of those groups may be hereinafter individually and/or collectively referred to as the “BAR”).

Program participation is initiated either upon a request by one or more of the parties made directly to the Probate Department hearing a matter, or may be by suggestion of the Probate Court staff including the Probate Attorneys as reflected in the Probate Notes for a given case (Probate Notes are available on the court’s website in advance of the hearing), or by the Judicial Officer hearing the matter. Participation is voluntary and must be agreed to by all parties to the matter before it is referred. If the parties agree to participate, on the day scheduled the parties report to the courtroom and will then be informed as to the location. In some cases the Attorney Volunteer will accompany the parties to the location for the settlement session. If the matter is settled the parties will generally reduce the agreement to writing to be signed and/or return to the courtroom to have the Judicial Officer hearing your case advise what, if anything, will next occur in the case including when you are to next appear.

NOTICE: WAIVER OF LIABILITY CLAIMS

This voluntary program is supported by the BAR including establishing certain minimum criteria for settlement officer participation. The fact that an Attorney Volunteer may have met any established criteria and/or even served as a volunteer in the Program is not an endorsement by the BAR or by the Court as to the volunteer’s personal or professional background, training, experience, ethics, or other qualifications. By participating in the Program, each party, for itself and all others claiming through them and each of them, specifically now and forever waives and relinquishes any and all claims for liability and/or damages of any kind and nature, whether arising in contract or tort, against the BAR and the Court, pertaining to any settlement conference including but not limited to any settlement proceedings, any failure to achieve a settlement and/or, if applicable, the satisfaction or failure to satisfy any settlement term or provision.

Please refer to the “Most Frequently Asked Questions and Answers” below for further information.

MOST FREQUENTLY ASKED QUESTIONS AND ANSWERS

WHY SHOULD I CONSIDER PARTICIPATING IN THE SETTLEMENT PROGRAM?

There many advantages to having your case resolved through settlement. Not only do the parties potentially avoid considerable delay, cost and expense in resolving their disputes, but the potentially devastating emotional toll associated with the kinds of cases usually heard in the Probate Court can be avoided as well. Furthermore, to the extent the parties might otherwise be entitled to some kind of monetary recovery from a fund or account, such as pertaining to a probate estate or a trust, if the case is left unresolved the possibility, and perhaps the certainty, exists that whatever might have been recovered from that estate or trust would be consumed, in whole or in part, by attorneys’ fees and/or other costs incurred during the course of litigation. Even if the case may not be successfully resolved, sitting down and reviewing the case with a neutral third party may greatly simplify the case should it proceed to an evidentiary hearing at some point of time in the future. Lastly in this regard, parties who successfully resolve the case will not only have settled on the terms they feel appropriate, they will have entirely avoided the risk associated with having the case decided against them adversely. No matter how confident you might be in the outcome of your case, there are absolutely no guarantees of outcome in litigation. In fact, it has been said that not just half, but more than half of all of the people who go to trial believe the judge got it wrong in deciding their case! As can be seen from the information below, there are a great many advantages, and virtually no disadvantages, to attempting to settle your case.

IS THERE A CHARGE FOR PARTICIPATION IN THIS PROGRAM?

No. There is absolutely no charge to you to participate in the Program. The Attorney Volunteers have agreed to provide their services free of charge during the court session on the day the matter is to be heard. Depending upon the number of settlement matters being heard and the number of Attorney Volunteers available on that day, the parties would be provided up to approximately 3 hours of free settlement services. If you have your own attorney, you will of course be responsible for compensating your own attorney according to the terms applicable to your attorney-client arrangements.

IF I WANT TO MEDIATE, DO I HAVE TO USE THE COURT’S SETTLEMENT PROGRAM?

No. In fact, if the parties can afford private mediation services, they are strongly encouraged to hire their own private mediator. There are a number of very qualified individuals and organizations who offer such services. Private “for pay” mediators should have a greater degree of available time than the maximum of up to 3 hours available to you at no cost through the Program.

ARE THERE CASE SIZE LIMITATIONS FOR PARTICIPATION IN THE PROGRAM?

No. However, it has been one of the primary objectives of those who have developed the Program and it is a primary objective of those who serve in the Program that it address the needs of those who might not otherwise be able to afford to retain private mediators.

WHO ARE THE ATTORNEY VOLUNTEERS?

The Attorney Volunteers have represented to the application committee that they have met certain minimum requirements established by the participating Bar Associations. These volunteers give their valuable time in an effort to help others. The objective of the Program is to seek the participation of volunteers who regularly appear in the Probate Courts on behalf of their clients. Unless there is a specific disclosure and signed written waiver by all parties who might be adversely affected, the Attorney Volunteers cannot be attorneys who ever represented, or are related to, any of the parties to the settlement matter to be heard.

ARE THE ATTORNEY VOLUNTEERS COURT EMPLOYEES OR OTHERWISE APPROVED BY THE COURT?

No. The Attorney Volunteers are neither court employees nor approved by the court. Screening of potential volunteers is performed by the participating Bar Associations to ensure these individuals meet certain criteria established by those organizations. Neither the BAR nor the Court shall be in any way responsible for the Attorney Volunteers or their efforts on the parties' behalf. See the "NOTICE" section above with respect to the fact that designation of an Attorney Volunteer does not constitute a BAR or Court endorsement.

IS PARTICIPATION IN THE PROGRAM VOLUNTARY?

Yes. Participation in the Program is absolutely voluntary on your part. However, before the court schedules your settlement session, you may be asked to stipulate, or agree, to a Court Order requiring all of the parties to personally appear at the session. Judicial Officers will oftentimes request such a stipulation or agreement since settling a case without the parties present at the same time at the same location is extremely difficult. It is also common courtesy that when such a session is scheduled, all sides personally appear (not by telephone). Otherwise, the Attorney Volunteer, as well as the other party or parties, may have spent time and effort preparing for and traveling to the courthouse unnecessarily.

IF THERE WAS A STIPULATION (AGREEMENT) TO APPEAR PERSONALLY, DO I HAVE TO COME TO COURT ON THAT DAY?

Yes. Due to various limitations on available resources, the court can only schedule a certain number of settlement sessions each day or week. If you or your attorney agreed to issuance of a court Order requiring personal appearance, you must personally attend. Otherwise, the settlement session will not be able to proceed as scheduled. Note that you cannot attend the

settlement session by telephone since there are no facilities at the courthouse for such participation. If, after issuance of such an Order for personal appearance you fail to personally appear, you may be subject to various sanctions, monetary (currently up to \$1,500) and/or otherwise, for violating a court Order. If some emergency arises immediately prior to the scheduled settlement session date, you must immediately contact the other side to let them know.

ON WHAT DAYS AND AT WHAT TIMES ARE THE SETTLEMENT SESSIONS HELD?

The court determines the days of the week when settlement sessions are scheduled. On the day of the settlement session, the parties should arrive by approximately 8:15 a.m. at which time they should confirm that all parties and representatives are present and ready. Even though your matter might normally not be called until a later time, settlement sessions start at the very beginning of the court day. Be advised that if there are more cases than Attorney Volunteers on the day of your session, the parties who arrive first have the best chance of starting early.

DO I HAVE TO HIRE AN ATTORNEY IN ORDER TO PARTICIPATE IN THE PROGRAM?

No. Although you do not have to hire an attorney to participate, if you have an attorney, the attorney must be present during the settlement session. If you do not have an attorney of record, although you need not be represented during such proceedings, parties often benefit greatly by hiring their own counsel to assist them during this settlement process.

ARE THERE INTERPRETERS AVAILABLE TO ASSIST IN THE SETTLEMENT PROCESS?

No. The court does not provide any interpreters for these matters. If the parties require the use of one or more interpreters, they are to make arrangements to hire or they must otherwise bring qualified persons to assist them in that regard.

WHAT ARE THE PARTIES TO DO IN ADVANCE IN PREPARATION FOR THE SETTLEMENT SESSION?

The most important thing is to make sure all decision makers appear at the settlement conference. This includes all of the parties necessary to resolve the case. This means having all persons necessary to enter into a settlement present so the case can hopefully be disposed of. Also, since the Attorney Volunteers do not have access to the files in the case, each of the parties is to bring with them copies of their relevant pleadings (petitions, responses, etc.). Copies of underlying instruments or other documents in dispute should be brought as well. Lastly in this regard, confidential settlement briefs, not exceeding 5 pages in length (double spaced), should be lodged (not filed) directly in the courtroom at least the morning prior to the date of the scheduled session. The Judicial Officer may advise you of different requirements. Checking the court's website is also recommended since there may be additional relevant information found there as well. The parties are encouraged to exchange their settlement briefs, redacting (e.g., blacking out with a marking pen), any specifics such as those pertaining

to planned demands or offers of settlement. See immediately below regarding the information to be included in the settlement briefs.

WHAT INFORMATION SHOULD BE INCLUDED IN THE SETTLEMENT BRIEFS?

The settlement briefs should include the names of the parties, their relationships, a list of the unresolved issues in the case and settlement history thus far. In addition, the briefs should indicate likely means of settling the case (demands and offers, as applicable, which may be blacked out with marking pen from the copy served on the other side).

ARE THERE CERTAIN FORMS WHICH MUST BE SUBMITTED BEFORE THE SETTLEMENT SESSION?

Yes. There are certain disclosure forms and agreements which must be reviewed and signed before the parties participate. Those forms are available on the court's website and in the courtroom.

HOW ARE THE PARTIES TO CONDUCT THEMSELVES DURING SETTLEMENT DISCUSSIONS?

Parties during settlement discussions must conduct themselves peaceably. No shouting, use of profanity, or physical contact of any kind is permitted or tolerated. The Attorney Volunteers have been advised to immediately terminate any session if there is any indication there may be any breach of the peace. Most importantly to the settlement process, the parties must remain open minded and respectful of all other parties, including the Attorney Volunteer.

CAN THE PARTIES CHOOSE TO RETAIN THE ATTORNEY VOLUNTEER'S SERVICES FOR ADDITIONAL SESSIONS BEYOND THE FREE SESSION OFFERED UNDER THE PROGRAM?

Yes. The parties may agree amongst themselves to retain the Attorney Volunteer's services at the parties' sole expense for additional mediation services beyond the services being offered free. Those arrangements would have to be made separately by the parties and the attorney. The court will not grant any preferential treatment to, or take any particular action, whether one way or the other because one or more of the parties desired to retain, or retained, the Attorney Volunteer privately. Furthermore, should an Attorney Volunteer be privately retained, the location for those additional sessions would also have to be arranged for by the parties and no court facilities could be utilized for such compensated, private mediation services or sessions.

WHAT HAPPENS IF THE CASE IS SETTLED DURING THE SETTLEMENT SESSION?

If the case has been settled the parties will generally sign a full or partial written settlement agreement and/or go back to the courtroom to have the Judicial Officer put the settlement "on the record". You should be prepared to be answer questions at that time such as: Whether or not you understand the nature and terms of the settlement agreement; whether or not the written agreement signed by you accurately reflects the agreed upon terms; and, if there are

any terms or conditions which you believe were part of the settlement which were not reduced to writing or as otherwise were stated on the record. The court may or may not set a future date for your return to court. Depending upon the circumstances, the court may “vacate” or take “off calendar” future hearing or appearance dates. You must not assume that future dates are vacated or taken off calendar unless you are specifically told they are by the Judicial Officer hearing the case in the courtroom.

IF I MAKE SETTLEMENT OFFERS DURING THE PROCESS, WON'T THOSE BE USED AGAINST ME IN THE CASE IF I DON'T SETTLE?

No. What is said or exchanged during the settlement process is confidential. However, information or documents which would otherwise be discoverable do not automatically become inadmissible solely because those things were revealed during the course of settlement. These and similar rules permit the parties to explore settlement without concern that doing so might unnecessarily and adversely affect their cases. For further information in this regard, reference is made to California Evidence Code §1115 et seq. as well as to California Evidence Code §1152.

WHAT HAPPENS IF THE CASE IS NOT SETTLED?

If, after conclusion of the settlement session, the case has not settled, the parties are return directly to the courtroom from which they were originally sent. If the parties do not already have a return date the Judicial Officer or court staff person will advise the parties when they are next to appear in court.

PROBATE SETTLEMENT OFFICER INFORMATION SHEET

Thank you for volunteering as a Probate Settlement Officer. Please note the following which should not only ensure the success of your settlement conference, but make the experience more rewarding for you as well.

1. Please be sure to arrive in Department 11 on the selected date no later than by 8:30 a.m. At the check-in counter you will find a Probate Settlement Conference Reservation Book which lists the case and parties'/counsels' names for each matter by date. You should inquire of the courtroom if parties/counsel are present and ready for the matter identified.
2. Settlement Briefs are not lodged, there are no court files available for your use and the courtroom clerk cannot provide or print out copies of pleadings or other scanned documents. However, at the time the parties signed up to participate in the program they were advised to bring briefs and/or operative pleadings to the conference with them (this is also indicated on the court's website at www.lasuperiorcourt.org).
3. Settlement Conferences are usually held in Department 2c, Room 235, which is directly across from Department 5. If multiple Settlement Officers are designated on the date you serve, an alternate location will be provided as well (most likely at the rear of the upstairs cafeteria). Advise Department 11's bailiff that you are conducting a Settlement Conference and that you want to confirm that the location for the conference (Department 2c unless you are notified otherwise) is unlocked.
4. Travel with the parties over to the Settlement Conference Department or other designated location.
5. If the matter is resolved in whole or in part, you should use the form Settlement Agreement. The form Settlement Agreement should be emailed to you with these instructions or if not, you may obtain the latest version of the form from the San Fernando Valley Bar Association.
6. Remember, if you are unable to volunteer on the date you have been designated to serve, you must make your own arrangements to have another volunteer from the panel approved by the Probate Settlement Committee do so on your behalf. Please do not contact the court staff in this regard.

Thanks Again!

NOTE ABOUT PARKING:

You should have been separately advised to park at Lot 26 or Lot 17, both located at 1st and Olive. Lot 17 (enter off Olive) requires a prepayment which is to be reimbursed at presentation of the validation sticker. Lot 26 (enter off 1st street) does not require prepayment. At the conclusion of your service, please visit Room 203 for your validation.



PRO BONO PROBATE SETTLEMENT PROGRAM

The Pro Bono Probate Settlement Program provides parties with pending probate matters an opportunity to resolve their cases with the assistance of experienced, attorney volunteers screened and selected by a committee of local Bar Associations. If the parties and the assigned judge believe a settlement conference would be helpful, the parties will then be directed to reserve a date by utilizing the reservation book on the clerk's desk in **Department 11**.

Currently, the program operates only on Tuesdays and Thursdays mornings with all sessions commencing promptly at 8:30 a.m. On the date selected and reserved by the parties, the parties would report to **Department 11**, not to the originating courtroom. They would then be directed to a location for the settlement conference. When the conference has been completed, if the session has resulted in a full or partial settlement the parties would then complete and sign the settlement agreement form. If a follow up court date is necessary, such as a Petition to Confirm Settlement, counsel should select a date for hearing in the ordinary course.

The program is able to accommodate self-represented litigants and includes all probate matters such as guardianships, conservatorships, decedents' estates, and trust litigation.

The "Most Frequently Asked Questions and Answers" pertaining to the program may be found on the court's website and may be accessed at: www.lasuperiorcourt.org. A hard copy of the Q&A's is also located at the front of the Reservation Book in Department 11.

INSTRUCTIONS:

If you wish to participate, confirm to your judge that you are willing to stipulate to an Order requiring all of the parties to appear *in person* for a settlement conference on the date the parties select.

The parties must reserve a Tuesday or Thursday 8:30 a.m. session by entering the information in the Reservation Book found on the clerk's desk in **Department 11**. In order to ensure the settlement program resources are efficiently utilized, the parties should pick a date which is available on their calendars. Court personnel cannot be involved in re-scheduling.

Parties (and counsel) must appear by 8:30 a.m. in **Department 11** on the date selected. They will then be advised by court staff where to meet with their settlement conference officer. Remember to bring copies of operative pleadings and, if possible, a confidential settlement brief to the conference.

Parties must advise each other (not the court), in advance, if, due to an emergency, they are unable to attend on the date selected. The parties are again reminded to select a conference date which they are certain will be available on their calendars.

“Salient Differences Between Mediations and Settlement Conferences: What That Means to You As A Settlement Officer (including Applicability of Evid. Code §§ 1115 and 1152 regarding Confidentiality)

By Myer Sankary, Howard Horwitz, and Kira Mastellar

I. Settlement Conference vs. Mediation? What’s the difference?

Introduction of Topic and Panel -- Myer Sankary

2. Background, history and purpose of Volunteer Program – Kira Mastellar

A. Purpose and History of Volunteer Program

B. Attorney Volunteer Criteria

C. Settlement Conference methods, Lead in to discussion of Conflicts of Interest and Confidentiality

3. Differentiating the Probate Settlement Conference from Civil Court

Mediation and Private Mediation -- Myer Sankary

A. **Different types of Settlement Conferences – General Description**

1. Mandatory Settlement Conference – Rule 3.1380, CCP §§1775 – court mediation rules apply.

2. Voluntary Settlement Conference - no specific rules apply.

3. Probate Mediation – voluntary facilitated negotiations with a trained and experienced professional neutral mediator initiated by probate counsel on behalf of their clients at a private office arranged by the parties at a specific time and place for an agreed upon fee protected by the rules and cases governing confidentiality usually ending in a written settlement agreement that contain detailed terms and conditions resolving the dispute often subject to the approval of the probate court. Evid. C. §§ 1115-1123. Briefs (confidential or otherwise) are usually provided by the parties to the mediator prior to the mediation hearing.

4. Probate Pro Bono Volunteer Settlement Conference – defined:

- “intended to provide an opportunity to resolve their cases for parties with probate, trust, estates, guardianship, conservatorship or similar matters which are pending before one of the Central District Probate courts The Program is staffed with practitioners experienced in Probate Court matters who volunteer their time to assist in the Program (“Attorney Volunteers”) or Settlement Officers”

- Volunteers are not required to have mediation training.
- Process for settlement conference differs from mediation.
- Parties not compelled to attend – only attend voluntarily based on stipulation in court.
- Neutral cannot impose outcome.
- No fee is charged.
- The settlement conference usually lasts for an hour but not more than 3 hours. Parties can leave at any time of their choice.
- Conference held on court premises provided by the court.
- Settlement discussions may end in formal written Settlement Agreement provided by the program or separately prepared by the parties. Usually subject to court approval. If necessary, parties may return to court room where the results of the conference can be put on the record (assuming courtroom/reporter availability).
- No use of court staff or court resources (e.g., no facilities to store documents).
- No briefs are provided by the parties, and court files are usually not available to read. All information is provided orally by the parties or they may provide documents for review.

B. What is mediation and how does it differ from Volunteer Probate Settlement Conference process?

1. Money and Time:

The biggest distinction between mediation arranged by the parties with a private mediator is that they usually have money invested in the process. The payment of a fee often makes people more committed to resolving the dispute, whereas a free conference may create an attitude that since it doesn't cost anything, we can use this as free opportunity to talk about the case without getting too serious. Also, when parties set aside a minimum of three hours or more in most mediations, there is more opportunity to explore the underlying issues and emotions that affect the parties decision making and risk taking. There is little time in the settlement conference to get to the underlying issues.

2. Mediations are usually conducted by mediators who have basic education and training in mediation theory and practice. VSC are often conducted by attorneys who have demonstrated relevant qualifications,

including knowledge and experience in probate matters. Volunteer qualifications are reviewed by Bar Association committee and accepted based on representations of experience. There is no certification nor standards to qualify to be a mediator in California.

3. Mediation is defined by EC §1115 and confidentiality applies; whereas VSC is not expressly defined. Settlement conferences raise questions about confidentiality and privilege protections.

5. Mediation may or may not begin with joint session where rules of mediation are established; the VSC program most often begins with joint session of the parties, but not necessarily so. Depends upon availability of court room space.

6. Mediation is usually not limited to 3 hours; VSC usually terminates within 3 hours, but not necessarily. (Some last longer.)

7. Both Mediation and VSC are voluntary. VSC based on stipulation stated on record in court. Mediation convened by agreement to mediate.

8. In both mediation and VSC – parties may be represented by counsel or may be self-represented.

9. Mediation approach is often facilitative; VSC may be more evaluative.

4. Confidentiality - Applicable Code provisions - Howard Horwitz

I. Evid. C § 1152 provides:

“Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability for the loss or damage or any part of it.”

A. Evid. C § 1152 is of limited application to our settlement program. It is a rule of evidence precluding admissibility of settlement discussions for the purpose of establishing liability

B. It is not a rule that might control discoverability

II. The California Rules of Court provide detailed rules regarding court mediation programs

- A. Such rules are set out at CRC 3.835 et seq.
 - B. These rules include strict disclosure requirements (CRC 3.855), competence requirements (CRC 3.856) and other provisions.
 - C. These rules however do not apply to our settlement program for two reasons:
 - 1. CRC 3.835 et seq applies to all “court mediation programs for general civil cases as defined in rule 1.6, unless otherwise specified.” Our program is put on by bar associations, not by the court; and
 - 2. Under Rule 1.6(4), “general civil case means all civil cases except probate, guardianship, conservatorship, juvenile, and family law proceedings...”
- III. Nonetheless, the statutory scheme regarding mediation confidentiality does appear to apply to our settlement program
- A. These rules are codified at Evid C § 1115 et seq.
 - B. Evid C § 1115(a) defines mediation as “a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.”
 - C. Evid C § 1115(b) defines mediator as “a neutral person who conducts a mediation.”
 - D. There is a ‘carve out’ from the statutory scheme at Evid C. § 1117. Not within the statutory scheme are certain mediations under the Family Code and settlement conferences pursuant to CRC 3.1380.
 - 1. CRC 3.1380 relates to “mandatory settlement conferences” set on either the court’s own motion or at the request of any party.
 - 2. Our program is entirely voluntary, not mandatory. Hence, the carve out in the statutory scheme should be inapplicable.

IV. Brief Review of Some Pertinent Provisions of the Statutory Scheme Impacting Confidentiality

A. Anything said or exchanged in mediation is confidential. (Evid. C §§ 1119)

1. A discoverable document does not become undiscoverable simply by virtue of being referenced in mediation. (Evid. C § 1120).

2. A judicially-crafted exception exists where it is thought that due process so requires. *Simmons v. Ghaderi* (2008) 44 Cal.4th 570.

B. Mediators are NOT to prepare or submit a report to the court. (Evid. C § 1121).

1. Mediators should not discuss any of the substance of the mediation with the court, including opinions about the case or the parties or the reasons for failure to conclude a settlement. *Foxgate Homeowners' Association, Inc. v. Bramalea California, Inc.* (2001) 26 Cal.4th 1

C. The mediation privilege applies to all communications until the mediation is deemed to have terminated. (Evid. C. § 1126)

1. When a mediation is considered to have terminated is covered by Evid. C. § 1125.

2. Generally, unless there is notice or an agreement to the contrary, the mediation is considered to end 10 days afterward where there has been no intervening communication. (Evid. C. § 1125(a)(5)).

D. Generally, what occurs at a mediation is not subject to discovery. (Evid. C. § 1119).

1. Attorneys' fees may be recovered if discovery is sought from a mediator. (Evid. C. § 1127).

V. In addition to following the statutory scheme, consistent use of a carefully crafted mediation agreement would also seem advisable.

4. Conclusion – Proposal for use of form - Pre-Conference Confidentiality Agreement with Waiver and Release of Claim Against Settlement Officer, Bar Association and Superior Court – Myer Sankary

The parties should agree to sign a pre-conference agreement containing the following minimum key provisions:¹

1. The Process is conducted by unpaid volunteer provided by Bar Associations, not court.
2. EC §§ 1115 et seq. confidentiality applies.
3. Disclosure of privileged information is privileged.
4. Settlement Officer shall not be subpoenaed or called to testify.
5. Release and waiver of claims against Settlement Officer, Bar Associations and Court.

¹ A proposed draft Pre-Conference Agreement, which has not been considered or approved by the Probate Settlement Conference Committee, will be available for distribution.

**ACKNOWLEDGEMENT OF CONFIDENTIALITY
FOR SETTLEMENT CONFERENCE**

Case Name: _____ **Case No.** _____

Date of CONFERENCE: _____

The undersigned hereby stipulate and agree to participate in the Bar Sponsored Probate Settlement Conference on the following terms and conditions:

1. The Conference shall be conducted by an unpaid volunteer Settlement Officer selected by the sponsoring Bar Associations for a period of not more than 3 hours at the court premises. The parties may request the Settlement Officer continue to serve as settlement facilitator for a fee off the court premises after the 3 hours on terms mutually agreed upon in writing.
2. Consistent with California Evidence Code §§ 1115 through 1128, the participants in this Conference agree that: except as otherwise provided herein, no written or oral communication made by any party, attorney, Settlement Officer, or other participant in or in connection with the Conference in this case may be used for any purpose in any pending or future proceeding unless all parties, including the Settlement Officer, so agree.
3. Disclosure of information that otherwise is privileged shall not alter its privileged character.
4. The Settlement Officer shall not be subpoenaed nor called to testify about any conduct or communication during the Settlement Conference.
5. The parties agree, pursuant to Evidence Code section 1123, that any written settlement agreement signed by the parties in the course of the Settlement Conference is subject to disclosure, and will be binding, enforceable and admissible to prove the existence of, and to enforce, the agreement.
6. Each party hereby releases, waives and relinquishes any and all claims for liability and/or damages of any kind against the Settlement Officer, the sponsoring Bar Associations and the LA Superior Court arising out of the Conference, the Settlement Agreement, the failure to reach a settlement, or for entering into a settlement that the parties may determine at a later time was not in their best interest, or the failure of a party to comply with the Settlement Agreement. The parties acknowledge that the Settlement Officer is not responsible for enforcing compliance with the Settlement Agreement.

**Acknowledgement of
Confidentiality for Settlement Conference — Page 2**

Case Name: _____

Case No. _____

(Party)

(Party)

(Party's Attorney)

(Party's Attorney)

(Party)

(Party)

(Party's Attorney)

(Party's Attorney)

(Party)

(Party)

(Party's Attorney)

(Party's Attorney)

(Other Participant)

(Other Participant)

(Title)

(Title)

Representing (*specify party*)

Representing (*specify party*)

ADVANCED PLANNING TO INCREASE YOUR LIKELIHOOD OF SUCCESS

Blake Rummel and Andrea Van Leesten

a) WHY

b) WHEN

c) WHAT

d) WHO

e) WHERE

PROBATE SETTLEMENT OFFICER TRAINING PROGRAM
March 18, 2014

Presentation Outline: “Closing the Deal”
(including how to finalize and properly document the settlement)

Lynard C. Hinojosa
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Lawrence M. Lebowsky
lebowsky@lebowsky.net
Joel M. Simon
jms@asfgslaw.com

I. Initial practical pointers.

1. Ethical concerns—you cannot be too heavy-handed. Salesmanship is key. Get them to the table, without forcing them.
2. Use the clock to your advantage. You have only until 11:30 a.m. to reach an agreement. Then the agreement must be written up, and you may need to get a Courtroom to advise the Court of the settlement.
3. If the deal is not done by 11:30 a.m., then the parties will walk away, and there will be increased costs, etc.
4. The parties know the whole history of their case, but the Judicial Officer has just small pieces of the story and will make a decision based on that.
5. For a two-afternoon session, you only have two hours for each side (breaks, questions, etc.). There is only so much time to present the case to the Judicial Officer and end up with the result you think you are going to get.
6. Don’t assume the Judge will know the names of all of the players as well as you do.

II. Reasons to Settle.

1. A settlement gives the parties control over their case and the process, instead of allowing a Judicial Officer to decide. Why surrender control of your case to someone else? Why give someone else control over your destiny?

2. Most importantly, a voluntary settlement can craft terms that the Judge has no power to do.

3. The parties cannot know whom the Judicial Officer will believe. Parties cannot consider only their own believability.

4. Why is it appropriate to settle now rather than later? Legal costs, anxiety and final resolution (settler’s remorse).

5. This Settlement Conference is free, but Mediation can be expensive.

6. How much cost will you incur to get to what you want? Usual cost is \$150,000 to \$200,000 for trial.

7. You may not get much time to present your case. The Court will not give you five days to try a \$50,000 case. There is more pressure to truncate your case.

8. There are many obstacles and costs to getting to trial. (e.g., smoking guns you weren’t aware of.)

III. Strategies to Reach a Settlement.

1. Attributes of a Mediator.
2. Analytical assistance.
3. Risk analysis and Devil’s advocacy.
4. Competing views of the case.
5. Talking numbers.
6. The Rule of Reason.
7. Help the parties to decide.
8. The Bottom Line.

9. Staying focused.
10. Avoiding and breaking impasse.
11. Settlement Officer’s Proposal.
12. Alternative process.
13. Finalizing agreement.

IV. Documenting the Settlement.

1. CCP 664.6. Requires all “parties to the pending litigation” to sign, or all such parties to be before the Court on the record. “Before the Court on the record” includes by telephone. This section provides:

If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

2. Form: Release and Settlement Agreement (see attached Exhibit 1).

a. These are usually emailed to Settlement Officers before the assignment date. These are also available from Judge Steele in Department 11, and from the SFVBA website: <https://www.sfvba.org/UserFiles/File/Probate%20Settlement%20Program/SETTLEMENT%20AGRMNT%20FORM.pdf>

b. Bring extra copies for all parties and counsel.

c. Settlement Officer should keep a copy of the signed agreement. The Court does not keep copies of these agreements.

3. Contents in general.

a. Dispose of Petitions (e.g., granted, denied without prejudice, etc.).

- b. Address the JTD’s.
- c. The agreement is effective immediately, and not dependent upon any future written agreement.
- d. Item 1 – Recitals and Representations. Strike out one of the choices. Use Exhibit A for recitals and representations, and label as such.
- e. Item 2 – Terms of Agreement. Print, and letter or number each term. Use Exhibit A for additional terms, and label as such. Use JTD’s as identifiers if you find it helpful.
- f. Item 3 – Costs/attorneys fees to date – each bear their own costs. Strike out one of the choices. Use Exhibit A for terms, and label as “Costs.”
- g. Item 4 – Mutual Release; Waiver of Known and Unknown Claims. If there are no claims asserted, this section should be struck through. If additional claims are to be allowed, consider striking through the last paragraph.
- h. Item 5 – No Assignment. Indicate any assignments that have been made. This likely does not include assignments for advances to beneficiaries.
- i. Item 6 – No Inducement/Entire Agreement. This is an integration clause.
- j. Item 7 – Binding Effect. If approval required, strike out the applicable language. If a more formal written agreement is to be executed, you should indicate here that this agreement is binding now.
- k. Item 8 – Admissibility/Disclosure. Necessary if enforcement of agreement is required. Evid. C. section 1119(b) applies to mediations:

No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given.”

Mediation is defined in section 1115(a): “‘Mediation’ means a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement.” Therefore, Mediation may include a Probate voluntary settlement conference.

l. Item 9 – Attorney’s Fees (to enforce/interpret settlement agreement). Strike out any inapplicable language.

m. Item 10 – Further Documents and Mutual Cooperation. This provision also covers any written dismissals or withdrawals agreed upon by the parties, which are not put on the record.

n. Item 11 – No Modification (unless in writing signed by all parties). Also an integration provision.

o. Item 12 – No Admission of Liability. This could be a crucial section that helps parties to accept a settlement—no one is conceding their arguments.

p. Item 13 – Effectiveness/Counterparts. This provision also contemplates counterparts signed by parties (or duly authorized representatives) not present, and electronic signatures.

q. Item 14 – Entry of Judgment/Jurisdiction (CCP 664.6). This provision to retain jurisdiction is a necessary prerequisite to enforcement under section 664.6.

r. Item 15 – Court Approval (if others’ rights are to be affected, you will need a petition for approval of the settlement agreement). Strike out language that does not apply. It might be helpful to list who will file such a petition, and the date by which it will be filed.

s. Item 16 – Acknowledgment; Waiver; Indemnity of Settlement Officer. This provision could be signed by all parties and counsel before beginning the settlement conference, and whether or not the parties settle. This settlement conference is within the definition of Mediation in Evidence Code section 1115, and therefore the provisions of section 1119 apply.

t. Signatures. For representative parties, indicate their office or position.

u. Confidentiality. If desired, this should be set forth on Attachment A. The Evid. C. section 1119(b) language in paragraph 8 would still be required for enforcement.

4. Contents for Conservatorship cases.

- a. Who is to be appointed for Person? For Estate?
- b. Any resignation to be accepted? Final account to be filed by (date)?
- c. Can conservatee retain the right to vote?
- d. What medical powers are granted? Dementia powers?
- e. Residency issues. Is home to be sold?
- f. Other powers to be granted?
- g. Amount of Bond?
- h. PVP Fees?

i. Third party conservator (one not named in a pending petition) can be appointed without a new petition because the Court has the authority at the hearing to appoint anyone in its discretion, or those identified in Probate Code sections 1810 or 1813. (Probate Code 1812(a)). Therefore everyone who has notice of the hearing is charged with notice that the Court can exercise this authority in ruling on any party's petition for appointment.

- j. Other conditions?

5. Contents for Estate and Trust cases.

- a. Who is to be appointed?
- b. Any resignation to be accepted? Final account to be filed by (date)?
- c. Full or limited IAEA authority?

- d. Amount of Bond?
 - e. Other powers?
 - f. Accounting to be approved or denied? In part?
 - g. Instructions to be approved or denied?
 - h. Appointment of third party personal representative (one not named in a pending petition) requires the filing of a new petition requesting that person’s appointment, publication of notice, etc.
 - i. GAL Fees?
 - j. Other conditions?
6. Who must sign.
- a. All parties.
 - b. Counsel cannot bind parties without client’s representation of authority (either written, or oral on the record before the Court).
 - c. If some parties are not present.
 - i. If all parties are not present, the agreement can recite that it is binding among the parties present.
 - ii. Obtain signature of absent party by fax or email. The fax number for Elias’ Snack Shop on the 2nd Floor is 213-680-3737. Email signature may be permitted by Uniform Electronic Transactions Act (Civ. Code secs. 1633.1 – 1633.17). The Agreement should state that the parties agree to conduct the transaction by electronic means (Civ. Code 1633.5(b)).
 - iii. Obtain written authorization from absent party for counsel to sign for them. Obtain written authority prior to settlement conference and bring to Court.
 - iv. Have absent party call in on Court Call to affirm counsel’s authority to sign for them. Court Call will allow a party to make arrangements (and pay

the fee) on the morning of the hearing to use Court Call. Ask the Court for permission for this. Court Call will need the name of the person at the Court authorizing the party to arrange the Court Call.

V. When and How to Put the Settlement on the Record.

1. Rule #1: Minimize use of Court resources. Avoid this if at all possible. It is difficult to find a Courtroom and to do this during the morning calendar. It places an unreasonable burden on the Court Reporters.

2. Reasons to put a settlement on the record:

a. Party is available by phone only.

b. Record oral representation of counsel’s authority to bind the party.

3. If necessary, then use judiciously, and only where there is a problem obtaining a written agreement signed by/for all parties, or where necessary to record oral representation of authority.

4. Establish that there are no agreements not evidenced by a writing, no separate promises, and no outside understandings.

5. If the parties agree, then state that the agreement is effective upon pronouncement, and not upon execution of a more formal written agreement to be prepared later.

6. At least one of the parties needs to order the transcript.

###

1 SETTLEMENT OFFICER INFORMATION:

2 _____
3 _____
4 Telephone: _____

7 **SUPERIOR COURT OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES, STATE OF CALIFORNIA**

9) Case No:
10)

11) **RELEASE AND SETTLEMENT**
12) **AGREEMENT**

13) Date:

14) Time: 8:30 a.m.

15) Case Assigned to Dept.:
16)

17 This Release and Settlement Agreement is entered into by the parties signing below as of the
18 date above, who, for good and valuable consideration which is hereby acknowledged, agree as follows:

19 1. Recitals and Representations [strike out the one that does not apply].

20 a. There are no recitals or representations; or

21 b. The recitals and representations of the parties, if any, are set forth on attachment "A"
22 to this Agreement.

23 2. Terms of Agreement.

24 The terms of this Settlement Agreement are as set forth below (and/or are set forth on or
25 continued on Attachment "A" hereto):
26 _____
27 _____
28 _____

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12 3. Costs [strike out the one that does not apply].

13 a. [Each party shall bear its own costs and attorney's fees]; or

14 b. [The provisions for the payment of costs and attorney's fees is set
15 forth herein and/or on Attachment "A" to this Agreement].

16 4. Mutual Release; Waiver of All Known and Unknown Claims.

17 Except for those rights specifically created by this Agreement and except as may be herein
18 specifically reserved in writing, with respect to the subject of all matters pertaining to, in any
19 way relating to and/or arising out of the within litigation, petitions and/or proceedings or the
20 facts, circumstances or events alleged therein, the parties and each of them, on their behalf and
21 on behalf of all of their successors and assigns and all those now or later acting on his, her or
22 their behalf, hereby mutually release and forever discharge the other parties to this Agreement
23 (including their agents, servants, successors, heirs, executors, administrators and all other such
24 persons, firms, corporations, associations or partnerships associated with them) from and
25 against any and all claims, demands, causes of action, obligations as well as any and all
26 damages, liabilities, losses, costs and/or expenses, including attorney's fees, of any kind or
27 nature whatsoever, past or present, ascertained or unascertained, whether or not known,
28 suspected, or now claimed. Each party hereto therefore expressly waives any such rights or

benefits available under §1542 of the Civil Code of the State of California which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

The parties further covenant and agree that except as may be necessary to enforce this Agreement, they shall not institute against the other any further petitions, claims, demands, actions, litigation or proceedings relating to or arising out of the subject matter hereof. The parties understand and acknowledge the significance and consequence of the specific waiver of §1542 described above and hereby assume full responsibility for any injury, loss, damage, or liability that may hereafter be incurred by reason of, or related to, the matters released herein.

5. No Assignment.

Each party represents, warrants, and agrees that he/she/it has not heretofore assigned or transferred, to any person or entity any claim, demand, or cause of action based on, arising out of, or in connection with the transactions and events which are the subject of this Agreement.

6. No Inducement/Entire Agreement.

Each party, individually and collectively, declares and represents that no promises, inducements, or other agreements not expressly referred to herein have been made, that this document (including any attachments hereto, each of which are to be initialed by the parties) contains the entire agreement between them, and that the terms of this Agreement are contractual and not recitals only. Each party understands that the other parties are relying on the truthfulness and validity of the representations, if any, made by the others that are set forth in the recitals, if any, and enter into this Agreement based upon those representations.

7. Binding Effect.

Except as may be herein specifically provided otherwise, this Agreement is binding on the parties and their successors, heirs, representatives, assigns, agents, officers, employees, and personal representatives without the necessity of any further court approval or order. This

1 Agreement is enforceable by and shall inure to the benefit of all successors, heirs,
2 representatives, assigns, agents, officers, employees, and personal representatives of each party.

3 **8. Admissibility/Disclosure.**

4 This Agreement and each of its terms are admissible and subject to disclosure and, to the extent
5 necessary to enforce the Agreement, to the extent Evidence Code §1119(b) is deemed
6 applicable, the parties waive same.

7 **9. Attorney's Fees [strike out any inapplicable language].**

8 In the event any action or proceeding to enforce, set aside, or modify the terms of this
9 Agreement, including an arbitration or reference pursuant to §638 of the Code of Civil
10 Procedure is brought by either party against the other under this Agreement, the prevailing party
11 shall be entitled to recover all costs and expenses, including the actual fees of its attorneys
12 incurred for prosecution, defense, consultation, or advice in such action or proceeding.

13 **10. Further Documents and Mutual Cooperation.**

14 Each party hereby agrees in good faith to fully cooperate with the other(s) including prompt
15 execution and delivery of such additional documents as may be required to effectuate the
16 purpose and terms of this Agreement and, should it become necessary to obtain court approval,
17 the parties shall each promptly execute such consents, agreements, and acknowledgments as are
18 necessary to obtain approval of this Agreement and the modification/termination of the
19 instrument(s) in dispute, if any.

20 **11. No Modification.**

21 This document sets forth the entire agreement between the parties and may not be altered,
22 amended, or modified in any respect, except by a writing duly executed by the parties to be
23 charged. All earlier understandings, oral agreements, and writings, unless referred to herein, are
24 expressly superseded hereby and are of no further force or effect.

25 **12. No Admission of Liability.**

26 The parties, by entering into this Agreement, do not abrogate or concede their positions, and no
27 admission of liability can be presumed or inferred by the execution of this Agreement.

1 13. Effectiveness/Counterparts.

2 This Agreement shall not be effective or binding on any party until fully executed by all parties.
3 The parties may execute this Agreement in any number of counterparts, each of which shall be
4 deemed to be an original instrument, but all of which together shall constitute one agreement.

5 14. Entry of Judgment/Jurisdiction.

6 The parties adopt the provisions of CCP §664.6 and by doing so authorize the Court, upon
7 motion, to enter judgment pursuant to the terms of the settlement and further request that the
8 Court retain jurisdiction over the parties to enforce this Agreement until performance in full of
9 the terms of settlement.

10 15. Court Approval **[strike out the one that does not apply].**

11 a. [This Agreement is not subject to court approval].

12 b. [This Agreement is subject to court approval].

13 16. Acknowledgment; Waiver; Indemnity of Settlement Officer.

14 The Settlement Officer, screened and selected solely by the Bar without any Court supervision
15 or involvement, has provided his/her services as an unpaid volunteer and merely acts as a
16 facilitator in assisting the parties in communicating with one another regarding possible
17 settlement and does not represent one side or the other. If any party hereto seeks to compel the
18 Settlement Officer to testify in any action regarding this Agreement, such party shall pay for
19 same at the Settlement Officer's usual and customary rate and holds such Settlement Officer
20 harmless for giving any such testimony. Except as elsewhere specifically provided herein, the
21 settlement process is covered by the provisions of Evidence Code §1115 et seq. as well as by
22 Evidence Code §1152. Each party specifically now and forever waives and relinquishes any
23 and all claims for liability and/or damages of any kind or nature, whether arising in contract or
24 tort, against the involved Bar Associations, including the participating volunteer attorneys, and
25 the Court. This waiver and relinquishment of claims includes, but is not limited to, those arising
26 out of any settlement, any failure to achieve any settlement and/or, if applicable, the satisfaction
27 or failure of any party or parties to satisfy any settlement term or provision. Each party also
28 specifically acknowledges and agrees that he/she has read the information regarding the

Settlement Program available on the court's website (www.lasuperiorcourt.org), including but not limited to the "NOTICE: WAIVER OF LIABILITY CLAIMS", and which materials are also available in the courtroom, and specifically acknowledges that he/she is bound to all of those terms, conditions and provisions.

AGREED AS OF THE DATE ABOVE WRITTEN:

Sign and print name

Sign and print name

Sign and print name

Sign and print name

Sign and print name

Sign and print name

APPROVED AS TO FORM AND CONTENT:

By: _____

Date

Attorney for: _____

By: _____

Date

Attorney for: _____

By: _____

Date

Attorney for: _____

By: _____

Date

Attorney for: _____

Attachment "A" to Settlement Agreement in the Matter of:

Initials: ____ ____
 ____ ____