

Settlement Negotiation Guidelines For Attorneys

In the United States legal system, trials are increasingly rare. Therefore, an overwhelming majority of matters handled by civil litigation attorneys will resolve via settlement or another form of private disposition.

A successful settlement negotiation requires an attorney to understand and respect their client's objectives and to keep the client apprised of developments in the settlement process. Additionally, the attorney must balance the duty of zealous advocacy for the client and the requirement to remain honest in their dealings with opposing parties.

The settlement negotiation process comes with its own legal and ethical pitfalls. Below are a number of best practices that attorneys can follow to ensure they engage in settlement negotiations properly and consistent with the Rules of Professional Conduct. However, you are encouraged to consult with an attorney authorized to practice law in your state for more specific legal advice.

- For cases taken on contingency, explain the contingency fee provision and create a record of the client's understanding of the same at the beginning of the matter, and at the time of settlement or disposition of the matter.
- Obtain informed consent from the client before engaging in settlement discussions by explaining the process and memorializing the discussion(s) with the client.
- When engaging in settlement negotiations, obtain the best result possible consistent with the client's objectives while ensuring your communications with opposing counsel are honest and made in good faith.
- Abide by a client's decisions regarding their objectives in the representation, including whether to accept an offer of settlement of a matter.
- Communicate all settlement offers to the client, and do so in writing. If DocuSign or another similar resource is used to electronically sign a settlement document, it is best to obtain and document the consent of the client for the use of electronic signatures.
- Provide correspondence to the client memorializing terms of any settlement offer they agree to accept prior to responding to opposing counsel.
- When representing more than one client, obtain informed consent from each client before engaging in settlement negotiations and before accepting any settlement offer. Do not enter into an aggregate settlement of the claims of multiple clients until obtaining the consent of all clients.
- If there is a concern that the client may disavow a previously accepted settlement, document the settlement with a mediation term sheet and consider requesting a hearing with the court to place the material terms of settlement on the record, complete *voir dire* with the client on the record, and have the judgment entered by the Court.

DISCLAIMER: This information is being provided for risk management and educational purposes only, and is not intended to explore lengthy analysis of legal issues. It does not solicit, establish, or continue an attorney-client relationship with any attorney or law firm identified as an author, editor, or contributor. The contents of this resource should not be construed as legal advice or opinion, and the contents should not be relied upon in any specific factual situation. If you have matters or questions to be resolved for which legal advice may be indicated, you are encouraged to contact a lawyer authorized to practice law in the state for which you are investigating and/or seeking legal advice.



59 Maiden Lane, New York, NY 10038 | 877.528.7878 | www.amtrustfinancial.com



AmTrust is AmTrust Financial Services, Inc., located at 59 Maiden Lane, New York, NY 10038. Coverages are provided by its affiliated property and casualty insurance companies. Consult the applicable policy for specific terms, conditions, limits and exclusions to coverage. For full legal disclaimer information, including Texas and Washington writing companies, visit: www.amtrustfinancial.com/about-us/legal-disclaimer.

