



and the San Francisco Superior Court

## **Early Settlement Program Policies and Procedures**

**Effective January 1, 2014**

The Bar Association of San Francisco's Early Settlement Program is available as one of the San Francisco Superior Court's Alternative Dispute Resolution programs. Local Rule 4.3 (Adopted-Effective July 1, 1998, revised July 1, 2012)

### **1. Purpose and Benefits**

The purpose of the Early Settlement Program (ESP) is to bring litigants together to engage in settlement discussions with experienced volunteer panelists. This allows parties to resolve disputes early in the judicial process, before trial, saving time and money. ESP volunteer panelists are experienced litigators who have agreed to provide 2-3 hours of free time per case. This Alternative Dispute Resolution (ADR) program is unique in that the panelists may provide their evaluation of the case during the conference, including opinions as to potential case value, based on their experience. The Bar Association of San Francisco (BASF) administers this program, which has been settling cases for the San Francisco Superior Court for more than 20 years with a 78% settlement rate and a 97% satisfaction rate among users.

Parties may opt to use the ESP by submitting a completed ESP Agreement directly to BASF (fax: 415-989-0381, email: esp@sfbar.org). ESP subject matters include business, personal injury, employment, labor, civil rights, discrimination, insurance, malpractice and landlord/tenant matters. It does not handle family law, asbestos, criminal, DES, IUD, short cause or unlawful detainer actions.

### **2. Status of a case on the Civil Active Calendar**

Participation in the Early Settlement Program does not alter its status on the civil active calendar.

### **3. ESP Panelists**

Conferences take place before panels of one or two volunteer attorneys. Each attorney has at least 10 years of litigation experience and is selected on the basis of experience and recommendations from peers. The panelists reflect a balance of plaintiff and defense attorneys.

ESP panelists have agreed to provide two to three hours of free time per case. The parties and the panelists may agree to continue with a conference beyond this pro-bono time or schedule additional conferences, at an agreed rate, paid directly to the panelist(s).

### **4. Administrative Fee**

In order to provide the benefits of this program, BASF charges a modest administrative fee.

#### **A. Payment of the fee**

1. BASF sends an invoice to parties after it receives the completed ESP Agreement from them. The administrative fee of \$295 per party (capped at \$590 for multiple parties represented by the same attorney) is due and payable 15 days after the date of the invoice. For purposes of calculating the fee, spouses/domestic partners, families with minor/dependent children, or a company and its principals, officers, or directors shall be considered one party provided they are all represented by the same attorney. All others are considered to be separate parties.
2. BASF will grant a waiver of the administrative fee if Court fees have already been waived for a party. Parties exempt from paying Court fees, such as government agencies, are also exempt from paying the ESP administrative fee.
3. The fee offsets the administrative costs of providing the Program and is not contingent on actual attendance at the conference or the matter resulting in a settlement (see 4.B for refunds).
4. The ESP Conference date will not be set until all administrative fees are paid. However, in multi-party cases where some parties have paid, counsel may agree to hold the conference without the participation of non-paying parties.

## B. Refunds

1. If the matter is withdrawn, in writing to BASF, after all parties have filed the ESP Agreement form and paid administrative fees, but prior to initial panelist assignment, one half the administrative fee shall be refunded, upon written request.
2. If the matter is withdrawn, in writing to BASF, after initial panelist assignment, the fee is non-refundable.
3. If the matter is closed due to the other party(ies) declining to pay the administrative fee and thus withdrawing their consent, the initiating party(ies), upon written request, will receive a full refund of the administrative fee, minus \$45/party service charge.

## 5. Notification of Date, Time, Location and Panelist(s)

- A. After the parties have submitted the ESP Agreement and paid the administrative fee, the ESP Coordinator will assign a panelist and the parties will work directly with the panelist to set a date and time for the conference.
- B. Conferences take place in the offices of the panelist(s) or the BASF offices; they are not held at the Court.

## 6. Rescheduling

- A. The Program's goal is to set a conference date which will optimize the settlement opportunity of each case. Once you have set the conference date with your panelist, should you have good cause for rescheduling – such as: calendar or trial conflicts; pending motions (summary judgments, motions to continue the trial, motions to withdraw, etc.); outstanding depositions; IMEs, etc. – contact your panelist and the other side immediately to arrange for a new date.

## 7. Settlement Before the ESP Conference

Counsel must immediately supply the ESP/BASF, the panelist(s) and all counsel with written notification of a settlement. The notice to BASF does not satisfy the requirement to notify the Court. See Rule 4.B. regarding administrative fee refunds.

## 8. Requirements of Counsel

- A. Counsel should immediately supply the ESP/BASF, the panelist(s) and all counsel with written notification of any changes in the case, such as settlement, dismissal, substitution of attorney, change of address, or notice of unavailability. The Court will not notify the ESP of these changes.
- B. All parties must submit a \$295 per party (capped at \$590 for multiple parties represented by the same attorney) administration fee to BASF within 15 days of the date of the ESP Invoice.
- C. Plaintiff's counsel shall send a written demand to all counsel two weeks prior to the settlement conference.
- D. Defense counsel shall send a written offer to plaintiff's counsel no later than one week prior to the conference date.
- E. Counsel should send a settlement conference statement by mail, hand-delivery, fax, or email insuring that the panelist(s) and all other counsel receive one copy no later than the Friday before the conference date. The ESP Statement must include a Proof of Service indicating all who were sent a copy. The Statements should not be filed with the Court. BASF does not need a copy.

## 9. Attendance at the Settlement Conference

The attorney who will try the case must be present at the ESP settlement conference with all appropriate parties, including client(s) and insurance representatives with settlement authority. All parties are required to be prepared to discuss settlement.

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