



THE BAR ASSOCIATION OF
SAN FRANCISCO

and the SAN FRANCISCO SUPERIOR COURT

EARLY SETTLEMENT PROGRAM POLICIES AND PROCEDURES

09/2008



The Early Settlement Program (ESP) is a coordinated effort of the San Francisco Superior Court and The Bar Association of San Francisco (BASF). It is designed to afford civil litigants the opportunity to engage in early settlement of their cases before a volunteer panel of experienced attorneys. The program is implemented through Local Rule 4.3 (Adopted-Effective July 1, 1998, revised January 1, 2005).

Superior Court Commissioner, Department 212

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1. Case Assignment

There are two ways a case may be assigned to the Early Settlement Program:

- A. Voluntary Program: A civil case may enter the voluntary program when all the parties stipulate in writing to enter the program. The stipulation shall be mailed to the designated Court Commissioner who may then assign the case to the program and cause it to be placed on an appropriate calendar. Cases deemed ineligible for the program are:
- (1) Those in which damages do not exceed the arbitration limit of \$50,000;
 - (2) Family Law, Asbestos, DES, IUD, short cause or unlawful detainer actions;
 - (3) Cases with calendar preference, and;
 - (4) Cases with a complexity that suggests that program participation would be ineffective.
- B. Mandatory Program: the designated Court Commissioner makes selection of cases at the time the case is set for trial. In making a preliminary determination that a case may qualify for the Early Settlement Program, the Court shall exercise its discretion based on the following criteria:
- (1) Damages are in excess of the arbitration limits;
 - (2) The potential expenditure of costs and attorneys' fees, when weighed against the recovery potential, suggests that the Early Settlement Program is in the best economic interest of the litigants; and
 - (3) Cases where the resolution of actual and/or legal conflicts may be assisted with the impartial evaluation of probabilities by experienced volunteer attorney settlement panelists.

2. Status of a case on the Civil Active Calendar

The assignment of a case to the Early Settlement Program does not alter its status on the civil active calendar. When a case is assigned to ESP it is also scheduled for a trial and a Mandatory Judicial Settlement Conference. The purpose of the Early Settlement Program is to allow litigants an opportunity to talk settlement at an early stage.

3. Scheduling ESP Conferences

Early Settlement Conferences are held before panels consisting of one or two experienced volunteer attorneys. The panelists reflect a balance between plaintiff and defense attorneys of at least ten years of litigation experience. Panelists are selected on the basis of recommendations from their peers.

Several panels are scheduled to meet on Fridays, with each panel hearing up to three cases a day. The panels consist of business, personal injury, labor, insurance, malpractice and landlord/tenant. Conferences take place in the offices of the panelist(s) or the BASF Offices; they are not held at the Court.

4. Administrative fee

A. Payment of the fee

1. The administrative fee of \$250 per party is payable to ESP/ BASF, 301 Battery Street 3rd Floor, San Francisco, CA 94111 within 15 days of the mailing of the Notice of Early Settlement Conference. For purposes of calculating the fee, spouses or domestic partners, families with minor or 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. To avoid paying the administrative fee, counsel must notify ESP/BASF pursuant to-numbers 7, 8 or 9 below within 15 days of the mailing of the Notice of Settlement Conference.
3. A waiver of the administrative fee is granted if the court fees have already been waived for a party, ESP/BASF should be informed of this in writing within 15 days of the mailing of the Notice of Early Settlement Conference.
4. The fee offsets the administrative costs of providing the Early Settlement Program. Therefore the fees are due at the time of Notice of Early Settlement Conference and are not contingent on actual attendance at the conference or the matter resulting in a settlement at the conference.
5. Failure to pay the fee will result in notification to the San Francisco Superior Court, which may result in the imposition of sanctions.

B. Refunds

1. If a case is dismissed, settled or otherwise removed from the Early Settlement Program, and BASF is notified in writing:
 - a. More than six (6) weeks prior to the originally scheduled Early Settlement Conference date, a full refund shall be issued upon written request to BASF;
 - b. Less than six (6) weeks but more than four (4) weeks prior to the originally scheduled Early Settlement Conference date, a 1/2 refund shall be issued upon written request to BASF;
 - c. Less than four weeks prior to the originally scheduled Early Settlement Conference date, no refund shall be issued.

5. Notification of date, time, location and panelist(s)

- A. After the case has been selected for the Program, the ESP Coordinator calendars it for a settlement conference approximately 2 to 3 months prior to the trial date.
- B. The ESP Coordinator sends notice of the Early Settlement Conference, setting time and date, to all counsel upon notification from the court that the case has been selected for the Program. Notice of Panel member(s) and location of conference is sent two to three weeks prior to the conference date.

6. Rescheduling

Rescheduling is not favored, and will be denied absent a showing of good cause. To re-schedule [for mediation see #8]:

A. **More than three weeks prior to the Early Settlement Conference date:**

A written application to reschedule must be submitted to the Early Settlement Program/ The Bar Association of San Francisco (ESP/BASF) 301 Battery Street, 3rd Floor, San Francisco, CA 94111 or FAX 415-989-0381 setting forth good cause for the continuance. The form can be found at www.sfbar.org/adr/esp. A copy must be sent to all counsel. **Telephone requests will NOT be considered.**

B. **Less than three weeks prior to the Early Settlement Conference date:**

1. An application, a declaration with a showing of good cause and the applicable court fee with a proof of service by fax or personal delivery must be filed with the Court at 400 McAllister St., Room 103, San Francisco, CA 94102. [Refer to Court website regarding fees, www.sftc.gov]
2. An endorsed filed copy of the declaration and proof of service along with a proposed order must be sent to all counsel and ESP/BASF and be delivered to Department 212. The declaration must set forth:
 - i. good cause for the continuance; AND
 - ii. include the date of the currently scheduled ESC; AND
 - iii. advise opposing counsel that any opposition to the request must be personally delivered to department 212 or faxed to (415) 551-5748 within 24 hours.
3. If the continuance is granted, an endorsed-filed copy of the order must be forwarded by fax or personal delivery to ESP/BASF by the requesting counsel. Filing a notice with the Court does NOT comply with this requirement to notify the Early Settlement Program; a copy of the court filing must be sent to ESP/BASF and the other side. Notifications or requests for changes are not permissible by telephone and cannot be considered by ESP/BASF staff.

7. Settlement before the conference

Counsel must immediately supply the ESP/BASF, and all counsel, with written notification of a Settlement. Filing a notice with the Court does NOT comply with this requirement to notify the Early Settlement Program. Telephone notification is not permissible.

8. Mediation in lieu of ESP

- A. To attend mediation in lieu of ESP, a stipulation to mediate [found at www.sfbar.org/adr/esp] must be signed by all counsel and filed with the Court. Endorsed- filed copies must then be delivered to Department 212, and faxed or delivered to ESP/BASF and all counsel. Until a Court endorsed- filed stipulation is received by ESP/BASF, the matter remains on the scheduled ESP Conference date and the ESP Policies and Procedures and Local Rule 4.3 apply concerning attendance.
- B. To attend mediation and remain in the Early Settlement Program, a stipulation is not required and ESP/BASF does not require notification. However, the ESP conference date will NOT be rescheduled to accommodate a mediation.
- C. See Policy 4.B regarding possible refunds of the Administrative fees.

9. Removing a case from ESP

- A. It is the policy of the Court that every case participates in an appropriate alternative dispute resolution process prior to a mandatory judicial settlement conference or trial, Local Rule 4.0.
- B. Once assigned, authority to remove a case from the Program rests solely with the Court. A written request for removal, which includes an application, a declaration establishing good cause and the applicable court fee with a proof of service by fax or personal delivery must be filed with the Court at 400 McAllister St., Room 103, San Francisco, CA 94102 [Refer to Court website regarding fees, www.sftc.org] and served on all counsel and ESP/BASF. An endorsed-filed copy and proposed order shall thereafter be submitted to Room/Department 212 for consideration. Filing with the Court does NOT comply with this requirement to notify the Early Settlement Program; a copy of the court filing must be sent to ESP/BASF and the other side. Telephone notification or requests for changes are not permissible and cannot be considered by ESP/BASF staff.
- C. If removal is granted, an endorsed filed copy of the order must be forwarded by fax or personal delivery to ESP/BASF by the requesting counsel.

10. Requirements of Counsel

- A. Counsel must immediately supply the ESP/BASF, and all counsel, with written notification of any changes in the case, such as Settlement, Dismissal, Substitution of Attorney, change of address, Notice of Unavailability, etc. Filing a notice with the Court does NOT comply with this requirement to notify the Early Settlement Program; a copy of the court filing must be sent to ESP/BASF. Telephone notification or requests for changes are not permissible and cannot be considered by ESP/BASF staff.
- B. All parties must submit a \$250 administration fee to The Bar Association of San Francisco within 15 days of the Notice of Early Settlement Conference.
- C. Plaintiff's counsel shall send a written demand to all counsel two weeks prior to the Early 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. A meet and confer session shall take place prior to the ESP Conference.
- F. Counsel will be notified by ESP/BASF of the panelist(s) assigned to the case approximately one to two weeks before the conference date. Counsel is then required to send the Settlement Conference Statements by mail, hand-delivery or fax, insuring that the panelist(s), ESP/BASF and all other counsel receive one copy no later than the Monday before the ESP conference date. The ESP Statement must include a Proof of Service indicating all who were sent a copy. The Statements should not be filed or lodged with the Court.

11. Attendance at the Settlement Conference

The attorney who will try the case must be present at the Early 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.

12. Sanctions

Failure to comply with the ESP/BASF Policies and Procedures set forth herein may result in a recommendation to the Court by the panelist that sanctions be imposed pursuant to Local Rule 4.3. [www.courtinfo.ca.gov/rules]

13. Additional ESP Conferences

The panelists have the authority to maintain jurisdiction over a case for additional conferences, if they are willing to do so.

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