



## SETTLEMENT AND MEDIATION

*This publication describes some of the rules and procedures at the Chicago Commission on Human Relations which apply to settlement of cases, settlement conferences, and mediation. This information does not constitute legal advice and is not a full statement of the law and procedure that may apply to a given case.*

**Commission Policy.** The Commission on Human Relations encourages voluntary settlement of discrimination cases. However, *no party is ever required to settle or to accept particular terms which may be discussed.* Parties may always discuss and negotiate settlement on their own if both sides are willing. In addition, authorized Commission staff or an independent mediator appointed by the Commission may facilitate settlement discussions. If an agreement is reached, there are two possible ways to document the settlement so the case can be closed. Partial settlements are possible—such as settlement between a complainant and one of several respondents. The Commission’s regulations about settlement are found in Subpart 230 and printed at the end of this publication.

**Staff-Facilitated Settlement During Investigation.** During the investigation of a case, an assigned investigator may ask parties if they are interested in exploring settlement and may facilitate settlement discussions. The investigator may arrange for parties to meet together at the Commission’s office if they are willing. If a party makes a settlement offer through the investigator, the investigator will communicate the offer to the other side and seek a response.

**Mediators and Mediation.** Mediation (sometimes called conciliation) is a process calling for parties to work together with the aid of a neutral facilitator (mediator or conciliator) who assists them in reaching a settlement. A Commission mediator is a person appointed to conduct a settlement conference or otherwise attempt to secure a voluntary settlement. The mediator is not a Commission employee but may be paid as an independent contractor. The mediator does not investigate, serve as hearing officer, or participate in any other way in the adjudication of the same case. The mediator’s role is advisory and non-binding, as the resolution of the dispute rests with the parties themselves. The mediator is authorized to determine how the settlement conference will proceed. See Regs. 100(7), 100(8), and 230.110.

**Settlement Conferences.** The Commission decides whether it will hold a settlement conference in a particular case. A settlement conference may occur at any time while a case is pending, and parties may request a settlement conference. The purpose of a settlement conference is to discuss whether the parties can agree to settlement terms which resolve the case without need for further investigation or an administrative hearing. An independent mediator, appointed by the Commission, will conduct the conference. The mediator may confer with the parties together or individually in an effort to help them reach an agreement. A settlement conference is not a hearing, and parties are not expected to present witnesses or other evidence. No formal record is made. See Regs. 230.110 and 230.120.

**Settlement Conference Procedures.** If the Commission decides to schedule a settlement conference, it will mail a scheduling order to the parties. The fact that a settlement conference is scheduled does not automatically postpone any filing deadline or other scheduled proceeding (such as a hearing or pre-hearing conference) in the case, although the Commission can order postponement. See Reg. 230.110.

**Attendance Requirements.** Once a settlement conference is scheduled, all parties must personally attend unless the Commission issues an order making attendance optional. A person attending for a business party must have authority to settle. Participation of persons other than the parties is in the discretion of the mediator. If a party fails to attend, or attends without authority to settle, the Commission may impose procedural sanctions such as default or dismissal, a fine, and payment of the costs of other parties who were inconvenienced. See Reg. 230.110 and Subpart 235.

**Attorney Participation.** Any party participating in a settlement conference may be represented by an

attorney who attends the conference. The party must also attend unless the attorney provides documentation of authority to settle on the party's behalf. The attorney must have filed and served an attorney appearance pursuant to Reg. 270.310, either before or at the beginning of the settlement conference.

**Rescheduling a Settlement Conference.** If unable to attend a settlement conference for good cause, it is necessary to seek a continuance as soon as possible, by filing and serving a written motion pursuant to Reg. 210.320(b). Forms for preparing this motion and documenting service are available from the Commission or its web site. *Telephoning is not sufficient to excuse a party from attending.* Although a party should telephone the Commission if a last-minute emergency arises, the call must be followed up with a written motion establishing good cause for the absence. In filing or responding to a motion for continuance, parties are asked to include information about their availability, to assist the Commission in rescheduling. The Commission will issue an order, which will set a new date if the motion is granted. See Reg. 210.320(c).

**Confidentiality of Settlement Discussions.** No mediator or Commission staff member may disclose to the public the content of settlement discussions. Nothing that is discussed may be used as evidence in any investigation or hearing on the merits of the complaint. A mediator will not disclose to other Commission personnel the content of settlement discussions the mediator has facilitated, unless the parties consent. See Reg. 230.120.

**Drafting Settlement Agreements.** During the investigation stage of a case, if the parties agree on settlement terms, the investigator may agree to draft a written settlement agreement for their signature and the Commission's approval. A mediator may be willing to draft a settlement agreement, especially a brief one. Parties often take care of the drafting and signing of the written agreement themselves. In that case, the Commission may issue an order giving them a deadline to submit the settlement document. Commission personnel will not draft private agreements which will not be submitted for Commission approval. Regardless of who drafts a written agreement, each party signing it must make sure the draft correctly states the terms the party has agreed to.

**Closing a Settled Case.** Once parties have agreed on settlement terms, Reg. 230.130 describes two ways to close the case or dismiss a settled claim:

**Approved Settlement Agreement.** If the parties want the Commission to approve the settlement and retain jurisdiction to seek court enforcement of it, they must put the settlement terms in writing. The Commission has a settlement agreement form which parties may use. The settlement agreement must be signed by *each* party agreeing to the settlement. An attorney may not sign unless the agreement includes a signed certification or other documentation that the attorney has authority to sign the agreement for the client. The signed settlement agreement must then be submitted to the Commission for approval. The Commission will issue an order approving the agreement if it is "knowingly and voluntarily entered into, unambiguously drawn, capable of being enforced, signed by persons with authority to do so, and consistent with the ordinance." The Commission may also require that a party submit information to allow the Commission to determine ability to comply.

**Private Settlement.** If the parties want to keep the settlement terms private, the complainant (or the complainant's attorney) can sign and submit a withdrawal pursuant to Reg. 210.190. The Commission has a form which may be used. On receiving the withdrawal, the Commission will issue an order dismissing the settled case or claim. The Commission will not retain jurisdiction to seek enforcement of the settlement and will not reopen the case if the agreement was not honored. However, a party may be able to sue in state court to enforce a private agreement as a contract.

**Enforcing an Approved Settlement Agreement.** If a party (usually the complainant) believes an approved settlement agreement was violated, the party may proceed independently (i.e. without Commission involvement) to enforce the agreement under other applicable law. Typically, the party would file a civil lawsuit in state court under principles of contract law. The party may also ask the Commission to seek

enforcement of the agreement. This is done by filing and serving a written motion, and the procedures are explained in Reg. 230.140, printed below. The Commission may fine a party for violating an approved settlement agreement and may ask the City of Chicago Department of Law to file a complaint in state court to enforce the agreement on behalf of the Commission. Successful enforcement results in a civil court judgment for the amount owed (or possibly an order for specific performance). The Commission does not attempt to collect or execute any judgment issued in favor of a party other than the Commission itself, although the party can proceed independently.

## **COMMISSION REGULATIONS ABOUT SETTLEMENT AND MEDIATION**

### **Part 100      General Definitions**

- (7)      **“Conciliation”** or **“Mediation”** is a process calling for parties to work together with the aid of a neutral facilitator—a conciliator or mediator—who assists them in reaching a settlement. The conciliator or mediator’s role is advisory and non-binding, as the resolution of the dispute rests with the parties themselves. Where used, “conciliation” and “mediation” have the same meaning.
- (8)      **“Conciliator”** or **“Mediator”** means a person designated by the Commission to conduct a settlement conference or otherwise attempt to secure a voluntary settlement, but who does not participate in the investigation, serve as hearing officer, or in any other respect participate in the adjudication of the same case. Where used, “conciliator” and “mediator” have the same meaning.

### **Reg. 230.100      Settlement Policy and Settlement Conference**

It is the policy of the Commission to encourage the voluntary settlement of complaints, although the Commission shall not require settlement or particular settlement terms. Any authorized Commission staff member may facilitate settlement discussions and draft a settlement agreement reflecting agreed terms for the parties to sign. The Commission may also hold a settlement conference pursuant to Reg. 230.110 in an attempt to secure voluntary settlement.

### **Reg. 230.110      Settlement Conference Procedure**

The Commission may schedule a settlement conference conducted by an independent mediator appointed by the Commission. Unless otherwise agreed by all participating parties, such a settlement conference shall occur no sooner than 14 days after the date of mailing the scheduling order. A scheduled settlement conference does not stay proceedings or constitute an extension of time for any filing unless so ordered. The mediator shall confer with the parties in an attempt to secure a voluntary settlement of the complaint. The mediator is authorized to determine how the conference shall proceed. A settlement conference is a scheduled proceeding at which attendance of all parties is mandatory unless otherwise ordered, and each party must have at least one person in attendance who has authority to settle. Each party may be represented by an attorney of record; however, attendance of an attorney only is not sufficient unless the attorney provides documentation of authority to settle on the party’s behalf. Participation of additional persons in a settlement conference is in the discretion of the mediator. If a party fails to attend a settlement conference or attends without authority to settle, the Commission may determine what if any sanction is just and proper among the options set forth in Subpart 235.

### **Reg. 230.120      Nondisclosure of Settlement Discussions**

Neither a mediator nor the Commission shall disclose publicly the content of any settlement discussions concerning a Commission case. No stenographic or other formal record shall be made of settlement efforts at a settlement conference or elsewhere. Neither party may use the fact that an offer was made, accepted, or rejected at a settlement conference or during other settlement discussions as evidence during the investigation or administrative hearing concerning the merits of the claim under discussion.

**Reg. 230.130 Closure of a Case by Settlement**

Parties may settle a claim or complaint either by approved settlement agreement or by private settlement as the parties may agree. Settlement closure procedures are as follows:

(i) Approved Settlement Agreement

If the parties agree to a settlement which they want the Commission to approve with retained jurisdiction to seek enforcement, the settlement terms must be reduced to writing, signed by the parties, and submitted to the Commission for approval. Attorneys may not sign a settlement agreement on behalf of a client unless the attorney or the client includes with the agreement a signed certification or other documentation that the attorney has authority to sign the agreement on the client's behalf. If the proposed settlement is knowingly and voluntarily entered into, unambiguously drawn, capable of being enforced, signed by persons with authority to do so, and consistent with the ordinance, the Commission shall issue an order approving the settlement and dismissing the settled claim or complaint. The Commission may require as a condition of approval that any party to a settlement submit such information as the Commission deems necessary to determine ability to comply. If the Commission does not approve the settlement, it shall order further appropriate action.

(j) Retained Jurisdiction

The Commission shall retain jurisdiction over the case to seek enforcement of an approved settlement agreement as described in Reg. 230.140.

(k) No Admission of Violation

Entering into an approved settlement agreement or private settlement is not an admission by any party as to whether an ordinance violation was committed.

(l) Private Settlement

If the parties agree to a settlement which they want to remain private (i.e., not approved by the Commission), in order for the Commission to close the case or dismiss the settled claim, the complainant must sign a withdrawal of the complaint or claim as set forth in Section 210.190. The Commission shall not retain jurisdiction to seek enforcement of any private settlement agreement.

**Reg. 230.140 Noncompliance with Approved Settlement Agreement**

If a party believes there has been a violation of an approved settlement agreement, the party may proceed independently to enforce the agreement under any applicable law. If the party wishes to invoke the Commission's retained jurisdiction, the party must file a motion for enforcement and serve it on all other parties, stating the nature of the alleged violation. All other parties shall have 14 days from filing of the motion to file and serve a response, unless the Commission issues an order allowing additional time. The Commission may conduct an investigation into the alleged violation and may issue any orders it deems necessary to exercise its retained jurisdiction. If the Commission finds substantial evidence that a party has violated the terms of an approved settlement agreement, the Commission shall promptly notify the parties in writing, may fine any noncompliant party, and may request the Department of Law to seek judicial enforcement in state court on behalf of the Commission. If the Commission concludes that substantial evidence of violation of the agreement is lacking, it shall notify the parties in writing.