

SUPREME COURT OF YUKON

PRACTICE DIRECTION
CIVIL-1
FAMILY-12

*Judicial Settlement Conferences
(Binding and non-binding)*

The practice in this Court is to canvass the possibility of a settlement conference when a matter is set down for trial. Rule 37 permits a judge to order attendance at a settlement conference. Videoconferencing or teleconferencing may be arranged on approval of the presiding judge.

Priority will generally be given to family law matters, as they are usually more urgent. It is anticipated that in personal injury matters, a private mediation will be attempted before a judge is called upon, except for those cases with a contested legal issue.

General

Judicial settlement conferences may take either a binding or a non-binding form, depending on the election of the parties. By default, settlement conferences will be non-binding.

The settlement conference will be conducted respectfully by the judge. Counsel and parties must be respectful at all times.

The settlement conference will be without prejudice. Nothing that is said or done during the conference can be raised in subsequent court applications or if the matter gets to trial. All documents produced will be returned to counsel or the parties or sealed and retained in the file, on the judge's directions.

The settlement conference will be recorded by the judge. The recording is for the use of the judge only. If agreed to by the parties, or at the direction of the presiding judge, the settlement conference may be recorded on the official digital audio recording system (DARS) in a courtroom. Any agreement of the parties in a non-binding settlement conference or decision of the judge in a binding settlement conference may be read into the court record in the form of a court order.

Counsel may jointly request a particular judge whose background and experience will be conducive to reaching a settlement. The Chief Justice will assign the settlement conference judge.

The settlement conference judge will not be the trial judge, unless all parties request and consent to that judge hearing the trial.

Generally, the attendance of counsel and the instructing party is required. In personal injury cases, the adjuster with settlement authority must attend.

Non-Binding

In advance of a non-binding settlement conference, the judge may have a case management conference with counsel to discuss the case. This will include the issues to be dealt with and their order; whether it will be a mediation, or one judge's opinion, or arbitration; the timeline for filing and content of settlement briefs; the order of the initial presentation; the level of participation of counsel and parties; and the people attending. Counsel shall normally prepare and file settlement briefs two (2) days in advance of the settlement conference. Counsel will be asked to disclose the settlement discussions to date including offers.

Binding

If parties elect a binding judicial settlement conference, they must complete and sign the Binding Judicial Settlement Conference Agreement in Form 108A and attend a case management conference with a judge to discuss issues, briefs, and process.

Duncan C.J.
September 3, 2021

SUPREME COURT OF YUKON

Between

Plaintiff/Petitioner

and

Defendant/Respondent

BINDING JUDICIAL SETTLEMENT CONFERENCE AGREEMENT

The parties, and their lawyers, agree to the following terms and conditions:

1. By the voluntary and informed consent of the parties, this matter will proceed by way of a binding Judicial Settlement Conference (JSC) to take place between _____ am/pm and _____ am/pm on _____, 20____.
2. Justice _____ will preside in this matter (the “presiding judge”).
3. Each party will set out its position in a written brief which will be provided to the other parties and filed with the court. These briefs will be exchanged by the parties in advance of the JSC and in accordance with a timeline determined in case management.
4. As directed by the presiding judge or agreed to by the parties, oral evidence or affidavit evidence may be required in advance of the JSC.
5. Of the issues presented at the JSC, those that are not resolved by agreement between the parties shall be determined by the presiding judge in a final and binding decision. Subject to the discretion of the presiding judge and the request of the parties, the decision will be rendered orally, or in writing, and will be read into the court record in the form of a court order.
6. This process is confidential. Statements made by counsel or by the parties in this process are privileged and without prejudice and cannot be used for any purpose, except to prove any settlement reached. With the consent of all parties, any written decision by the judge may be published providing it is anonymized.

7. With the agreement of the parties, or at the direction of the presiding judge, the JSC may be recorded on the official digital audio recording system (DARS) in a courtroom. JSCs taking place outside of a courtroom will be recorded on a separate system for the personal use of the presiding judge. Any recording made will be sealed, and access will only be granted after an application to the presiding judge.
8. The presiding judge is non-compellable as a witness in any subsequent proceedings and is immune from legal actions.
9. The rules of evidence may not necessarily be followed in the JSC, and, in particular, hearsay evidence may be considered.
10. Any decision made as a result of binding JSC will be treated as a consent order for the purposes of appeal. It may be read into the court record.
11. The parties acknowledge that they have each read this Agreement in its entirety and understand the provisions thereof.
12. This agreement is being executed by the parties after having been informed of their right to obtain independent legal advice and, if not represented by counsel, documentation attesting to their exercise or waiver of this right is attached.
13. This agreement shall be filed and kept on the court file.

Dated at _____, Yukon, this _____ day of _____ 20_____.

Plaintiff/Petitioner

Defendant/Respondent

Lawyer for the Plaintiff/Petitioner

Lawyer for the Defendant/Respondent

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

I, _____, of _____, Barrister and
(name of lawyer) (city, province/territory)
Solicitor, certify that on the _____ day of _____, 20__, I explained to
_____ the provisions and effect of the attached Binding Judicial Settlement
(name of party)
Conference Agreement and the said _____ acknowledged to me that
(name of party)
he/she fully understood the terms of the Agreement and further acknowledged that
he/she was prepared to execute the Binding Judicial Settlement Conference Agreement
of his/her own free will and without undue influence or coercion from any person and,
more particularly, from _____.
(name of other party)

WAIVER OF INDEPENDENT LEGAL ADVICE

I, _____, hereby waive my right to independent legal advice.
(name of party)
I have been informed that I should have legal advice. I have read the provisions and
understand the terms and effect of the attached Binding Judicial Settlement Conference
Agreement and have executed the agreement of my own free will and without undue
influence or coercion from any person and, more particularly, from
_____.
(name of other party)

SUPREME COURT OF YUKON

S.C. No. _____

BETWEEN:

*

PLAINTIFF

AND:

*

DEFENDANT

SETTLEMENT CONFERENCE BRIEF OF THE PLAINTIFF / DEFENDANT

(Name) _____
Counsel for the Plaintiff

(Name) _____
Counsel for the Defendant

NAME OF FIRM

NAME OF FIRM

123 XYZ Street
Town, Yukon
Y0Y 0Y0
Ph/fax
Email

123 XYZ Street
Town, Yukon
Y0Y 0Y0
Ph/fax
Email

SUPREME COURT OF YUKON

S.C. No. _____

Between:

*

PLAINTIFF

And:

*

DEFENDANT

SETTLEMENT CONFERENCE BRIEF OF THE _____
(Family Law)

FROM: _____

TO: The Trial Coordinator, Supreme Court of Yukon

FOR: _____

DATE: _____

DATE OF SETTLEMENT CONFERENCE: _____ at _____ a.m.

I. FACTS

Background

Provide a detailed history of the relationship, marriage, children, childcare, separation etc. as appropriate.

1.

2.

3.

II. ISSUES

The issues to be discussed at the settlement conference are as follows (*point form*):
(*potential issues:*)

- A. Custody**
- B. Child Support**
- C. Residence of the Children;**
- D. Child Support (including section 7 expenses)**
- E. Division of Assets and Debts;**
- F. Spousal Support**

III. ANALYSIS/PROPOSAL FOR SETTLEMENT

- A. Custody**
- B. Child Support**
- C. Residence of the Children**
- D. Child Support/Section 7 Expenses**
- E. Division of Assets and Debts**
- F. Spousal support**

All of which is respectfully submitted this ___day of _____, 20___.

Counsel for the _____

SUPREME COURT OF YUKON

S.C. No. _____

Between:

*

PLAINTIFF

And:

*

DEFENDANT

SETTLEMENT CONFERENCE BRIEF OF THE _____
(Civil Law)

FROM: _____

TO: The Trial Coordinator, Supreme Court of Yukon

FOR: _____

DATE: _____

DATE OF SETTLEMENT CONFERENCE: _____ at _____ a.m.

I. FACTS

Background

Provide a history of the dispute that includes a brief statement of all relevant facts.

- 1.
- 2.
- 3.

II. ISSUES

The issues to be discussed at the settlement conference are as follows (*point form*):
(*potential issues:*)

A.

B.

C.

III. ANALYSIS/PROPOSAL FOR SETTLEMENT

(*for each of the issues set out above*)

A.

B.

C.

All of which is respectfully submitted this ___ day of _____, 20__.

Counsel for the _____