

# Termination Settlement Conferences

# Purpose of Settlement Conference

- Negotiate an open adoption agreement –Department will rarely agree to more than four in-person visits a year
- Educate parents about their options and likelihood of success at trial
- Educate potential adoptive parents about value of contact with biological family

# Pre-Settlement Conference Contact with Attorneys

- Written report outlining party's position
- Separate telephone calls with counsel for each party



# Sample pre-settlement conference email

Counsel:

I look forward to working with you and your clients to settle this case. I would appreciate the Department, through counsel, sending me the termination petition, the last PPH or DR order and the associated court report, any pertinent evaluations and the proposed open adoption agreement. I assume CASA's counsel will provide the CASA report. Any party is welcome to provide me additional documents/information that they believe will be helpful.

I find it useful to speak privately with counsel for each party prior to the settlement conference. The best day for me is Tuesday, May 10<sup>th</sup> between 12:00-4:00. Please contact my bailiff at \*\*\*-\*\*\*\* to make arrangements.

# Local Rules Regarding Settlement Conferences

- Primarily codified as LR 16
- Usually establish that judge who conducts settlement conference is disqualified for trial
- Establish required information



# Uniform Mediation Act: RCW 7.07

## RCW 7.07.030:

- 1) Except as otherwise provided in RCW [7.07.050](#), a mediation communication is privileged as provided in subsection (2) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by RCW [7.07.040](#).
- (2) In a proceeding, the following privileges apply:
  - (a) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication;
  - (b) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator; and
  - (c) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.
- (3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.



# ER 408

In a civil case, evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible.

## Matter of Dependency of AJC and LC 2022 WL 202646 (Div I, Jan 2022)(unpublished)

Parent asked on cross-examination whether a service/reunification plan was discussed at settlement conference. Court of Appeals upheld admission because not admitted to establish liability.

