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Settling Civil Cases: Where Attorneys Disagree About Judicial Roles

By Wayne D. Brazil
Editor’s Note: Do attorneys’ opinions about how judges should handle settlement negotiations vary by region, experience, size of firm, or dollar value of the case? Are there differences in viewpoints between the plaintiff and the defense bar or between attorneys handling small cases and those handling big cases? Do public interest lawyers, in-house corporate counsel, and law firm attorneys differ in their views?

These are questions that Professor Wayne D. Brazil analyzes in this article, which is part of a larger study of attorneys’ views about judicial roles in settlement. The widely varying views among some of these groups seem to imply that different settlement techniques may be more effective with one group than another.

There are many parallels between the views of the following three subgroups of lawyers: (1) those who practice in small firms (one to five attorneys), (2) those whose typical case is relatively small (valued at less than $50,000), and (3) those who spend more than 70 percent of their time on the plaintiff’s side. Similarly, the responses from the big firm, big case, and defense groups often fall into patterns with much in common. These results led us to compare profiles of subgroups and we found, not surprisingly, that the defense lawyers tend to work in larger firms and handle larger cases than the plaintiffs’ lawyers and that small case lawyers are substantially more likely than their large case counterparts to work in small firms and to spend large parts of their time on the plaintiff’s side.

The fact that the views of the attorneys in these subgroups tend to cluster may be of considerable significance. Judges might be able to use the patterns of attorneys’ feelings about the issues raised in the questionnaire to begin identifying the kinds of involvement in the settlement process, as well as the kinds of specific facilitation techniques, that are most likely to be well received in different kinds of cases. Our data, in other words, should help judges begin to develop the capacity to predict how lawyers in different situations will react to different judicial approaches to settlement. That ability to predict reactions might play an important role in developing the kinds of techniques that are likely to contribute most in the different kinds of cases.

INTERDISTRICT COMPARISONS

Lawyers from northern California are substantially more likely than lawyers we studied (western Missouri, western Texas, and northern Florida) to endorse most forms of active judicial involvement in the settlement arena. The percentage of lawyers endorsing each of the following propositions is substantially higher in northern California than in any of the other districts:

- Involvement by federal judges in settlement discussions is likely to improve significantly the prospects for achieving settlement.

(Please turn the page)
Wayne D. Brazil

is a United States
magistrate and was
a professor at
Hastings College of
the Law when the
study was conducted

• Federal judges should try to facilitate settlement in
cases where they have not been asked to do so.
• A settlement conference hosted by a judge should
be mandatory in most cases in federal court.
• A settlement judge who actively offers suggestions
and observations is preferable to one who simply
facilitates communication between the parties.
• Federal courts should channel most settlement con-
ference work to those judges who are most suc-
cessful as settlement facilitators.
• Federal courts should require attorneys to ex-
change settlement conference statements detailing
their versions of key issues and describing their
evidence.
• Settlement conferences are significantly more likely
to be productive if clients are required to attend.

One of the most remarkable results of our survey is
that more than 70 percent of the litigators responding
from northern California endorse each of these state-
ments. At least as dramatic is the fact that nine of every
ten litigators in the California group subscribe to three
of the most fundamental of these propositions:

• Judicial involvement contributes significantly to
prospects for achieving settlement (92 percent).
• Settlement conferences should be mandatory in
most federal court actions (87 percent).
• The judge who actively offers suggestions and
observations in settlement conferences is preferable
to the one who merely facilitates communication
(90 percent).

Judges Can Make Special Contributions to Settlement

By Wayne D. Brazil

If lawyers already manage to settle a large per-
centage of federal civil actions, why do they say in
such overwhelming numbers that involvement by
federal judges in settlement discussions is likely to
improve significantly the prospects for achieving
settlement? Statistically, the prospects for achiev-
ing settlement appear to be good without judicial
intervention.

One possibility is that lawyers think that active
judicial involvement could increase even more the
percentage of cases that settle. This, however, does
not appear to be a likely explanation, because active
litigators believe that a huge percentage of civil
cases settle before trial. Lawyers might also credit
the judiciary for currently high settlement rates, but
other studies indicate that judicial involvement in
the settlement dynamic usually is not intensive.

The data from our survey do not provide a
definitive answer, but they do offer clues and sug-
gest hypotheses. Even though a large percentage of
cases ultimately settle, the process through which
the parties eventually reach agreement often is dif-
cult to launch; it can be awkward, expensive,
time-consuming and stressful. The route to resolu-
tion often is tortuously indirect, and travel over it
can be obstructed by emotion, posturing and inter-
personal friction. Counsel and clients can be dis-
tracted by irrelevancies, and resources can be con-
sumed by feints or maneuvers designed primarily to

save face with opponents or to retain credibility
with the people paying the bills. Parties and lawyers
can be slow to feel confidence in the wisdom or
fairness of proposals developed through such an
awkward, adversarial process. People assume that
their opponents are not disclosing significant informa-
tion and are offering only self-serving assess-
ments of the implications of evidence and the
relative strengths of competing positions.

Since at least some of these problems burden
many private settlement negotiations, lawyers
might feel that federal judges can make significant
contributions to the settlement process by reducing
frictions and removing obstacles that otherwise
would impede it.

The pattern of lawyer responses to our questions
suggests an important unifying hypothesis: judicial
involvement is likely to improve prospects for
achieving settlement because judges are profes-
sional decision makers. Litigators, by contrast, are
professional advocates. The skills that are central
to the litigator's professional self-image and role in-
clude: marshalling evidence and arguments for one
side, and selecting and packaging information to
make it as persuasive as possible. Lawyers are
trained to uncover evidence, then to arrange its
display as they would like others to see it. Thus, the
litigator's job is not to judge dispassionately, but to
argue persuasively.

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Why are there such differences between the responses of California lawyers and lawyers from other areas?

Another issue about which the Californians have much stronger convictions than lawyers from the other districts is whether the judge assigned to preside at trial should be the judge who hosts the settlement conference. Even when the case is scheduled to be tried before a jury, almost half the northern Californians believe it is improper for the assigned judge to become involved in settlement discussions; less than one-fourth of the litigators in the other jurisdictions share this view. When an action is to be tried before a judge, more than two-thirds of the litigators responding from northern California say it is improper for the assigned judge to become involved in settlement discussions.

Given these views, it is not surprising that a much higher percentage of the Californians say they are likely to be more open in settlement discussions with a judge who will not preside at trial than with the assigned judge (among the Californians, 80 percent feel this way; among attorneys from the other three districts, in the aggregate, the figure is 51 percent). The percentage of lawyers who believe that federal courts should permit the litigants to choose the judicial officer who will help them attempt to settle their case is almost twice as high among the Californians as it is among the Floridians, Texans and Missourians.

It also is noteworthy that the Californians as a group are more comfortable than the non-Californians with private ex parte discussions. Lawyers from northern Florida, by contrast, are the least likely to feel that such private discussions are proper or effective. In fact, an
average of only about 40 percent of the Floridians we polled approve of any of the facilitation techniques that involve judges conferring privately with individual lawyers during settlement negotiations. Appreciably higher percentages of the litigators from northern Florida endorse the propriety of techniques in which the judge meets with all counsel in open session. But, among all our respondents, the Floridians are generally the most ambivalent about the value of active judicial participation in settlement and the techniques used to achieve it.

This is not to suggest, however, that most of the attorneys in northern Florida want federal judges to quit the settlement arena. On the contrary, our data indicate that the majority—even in our least urbanized, least populous district—want federal judges to play an important, constructive role in this key part of the dispute resolution process.

The Floridians and, to a lesser extent, the Texans and Missourians, tend to part company with the Californians in views about how federal judges ought to play this role. As a group, the litigators from northern California feel that judges contribute most when they are assertive, when they become thoroughly involved in the negotiation dynamic, when they cut through counsel's posturing, expose key issues, analyze evidence and arguments, and then offer frank assessments of parties' positions. In the other districts, and especially in Florida, lawyers are apt to have more positive feelings about less aggressive forms of judicial involvement. Litigators in the three non-California districts are more likely to rate highly the relaxed, informal judicial approaches to settlement conferences and more likely to view the hard-boiled style as counterproductive, perhaps even an abuse of judicial power. Among the Floridians, in particular, lawyers seem to believe that the most appropriate role for judges, and the one in which they will contribute most, consists primarily of raising the settlement issue, providing a neutral forum and setting a constructive tone for negotiations, facilitating communication, and nurturing positive feelings about prospects for reaching an agreement.

It would be inaccurate, however, to suggest that most of the Floridians would confine the judicial role for making these kinds of essentially environmental contributions. It is in northern Florida that the highest percentage of litigators (72 percent) believe that in most cases the attorneys should "be required to meet with the trial judge shortly after the matter is at issue to identify undisputed facts and law."

Why are there such sizeable differences between the responses by northern California lawyers and those by lawyers in the other three districts? Why, for example, is the percentage of California litigators who favor making settlement conferences mandatory 28 points higher than the average of that percentage in the other three jurisdictions? Many factors probably help account for this difference. One is very likely the influence of practices in the state courts in the four regions. Settlement conferences are not required by local rule in any of the federal district courts in our sample. There is one region, however, where settlement conferences are mandatory in many of the state courts. That region is northern California.

Several superior courts (state trial courts of general jurisdiction) in the San Francisco Bay area aggressively encourage settlement of civil actions and have developed programs that feature active judicial participation in settlement negotiations. Thus, the state courts in this region have acculturated many litigators from northern California to a mandatory settlement practice in both the federal and the state courts. We can infer that one reason the northern California group supports so strongly the idea of requiring a settlement conference in most actions is that many of these lawyers have grown accustomed to such a system and have had, on balance, positive experiences with it.

Another consideration that might help explain these inter-district differences is the fact that lawyers from northern California typically are involved in larger cases than are the attorneys from the other three districts. The process of hammering out a settlement presumably is more difficult in larger, more complex cases, and lawyers in such cases feel a greater need for assertive judicial assistance in the settlement arena. By contrast, lawyers with smaller, more straightforward cases apparently encounter less resistance to settlement of the kind that an analytically assertive judge might be useful in overcoming. In the absence of such resistance, an aggressive judicial style appears more likely to backfire by promoting resentments; some of our respondents complained, for example, that aggressive judges can give the impression that the court is more concerned about the state of its docket than about reaching agreements that do justice to the merits of the litigants' positions.

We also suspect that there is a connection between what kind of judicial intervention the Californians want and who they think the intervenor ought to be. Perhaps it is because they want their settlement facilitator to dig deeply into the case, to learn it thoroughly, to form and express opinions about it, that they prefer the assigned trial judge not to play this role. Perhaps they fear that a judge who is as actively involved and as evaluative as they want him or her to be at the settlement stage could not try the case with that full impartiality lawyers have a right to demand.

This summary has focused on the Californians and the Floridians because it is between these two groups that the differences of opinion are greatest on most of the issues we explored. The views of lawyers who practice in western Texas and western Missouri generally fall somewhere between the two extremes, but more often than not are more closely aligned with those of the Florida group.

There are, however, a few matters on which the views of the lawyers in Texas or Missouri stand out. For example, when we analyze opinions about the effectiveness of various styles with which judges might conduct settle-
Special
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cently Wisconsin, passed laws raising their drinking ages. All of these new laws, plus an increase in police roadblocks and other enforcement tactics have directly and significantly impacted the members of our conference in a way that would have been inconceivable in 1969 but now in 1984 seems well nigh inevitable.

Through all these changes, there has remained a constant, fixed and immutable dedication of our conference to the cause of justice and to articulating the legitimate goals and aspirations of our individual members. Those who established this conference 15 years ago labored long and labored well, and the fruits of their works are now everywhere to see. We who have had the great privilege of coming after, and carrying on their work, feel, quite literally, that we have been carried on the shoulders of giants.

To all who have assisted me in my role as chairman, during the past year, especially the indefatigable Susi Moglowsky, our brilliant staff director, my deepest gratitude. To our great conference, on the occasion of its 15th anniversary, ad multos annos.

Appellate
(Continued from page 28)

Committee, worked diligently on this. The Appellate Advocacy Committee under the leadership of Judge Joseph Sneed is winding up a major effort to adapt the appellate advocacy program of the conference to both CLE programs throughout the country and to the curricula of the law schools of the United States. Finally, the Advisory Committee to the LL.M. program at the University of Virginia Law School continues to monitor and support that most important academic opportunity for appellate judges, under the leadership of the committee chairman, Judge James Duke Cameron, who initiated that program.

It has been an active year for the Appellate Judges’ Conference, primarily because of the efforts of the Executive Committee members and the various committee chairmen who have carried out the program of the conference. It has been a privilege and a pleasure to work with such dedicated and talented persons. The appellate judiciary of the country owes a great debt of gratitude to those who have worked selflessly to aid the cause of the appellate judiciary in the United States.

Attorneys Disagree
(Continued from page 24)

mment conferences, we discover that it is among the Texans that both the analytical and the relaxed, informal approaches are most likely to be rated very effective. While the margin separating the Texans from the next most enthusiastic group is small in both instances, it is noteworthy that large numbers of lawyers in the same district have such positive feelings about both approaches. Many of these litigators may believe not only that these two approaches are compatible, but that the judges who combine them are the most effective settlement facilitators.

The litigators from Texas also have more positive feelings about both the effectiveness and the propriety of the trial judge in a jury matter assessing, in a conference attended by all parties, the reasonableness of each litigant’s settlement position. The jurisdiction where the highest percentage of attorneys rate this technique very effective is Texas, which also is the jurisdiction where the highest percentage of attorneys believe that use of this procedure is proper. It is not clear why endorsement of this particular technique is stronger in western Texas than elsewhere. Perhaps judges in that region often use this technique and lawyers there both have become comfortable with it and learned to make it useful.

The two opinions that distinguish western Missouri lawyers from the other groups happen to be negative. Our Missouri respondents are considerably more hostile than other lawyers to the idea that federal courts should require attorneys “to exchange settlement conference statements detailing their versions of key issues and describing their evidence.” Only 27 percent of the Missouri litigators support this idea, while among the Texans, 48 percent endorse it, among the Floridians, 49 percent, and among the Californians, 72 percent. We have no idea what accounts for the Missourians’ more negative feelings about imposing this requirement.

YOUNG LAWYERS AND SEASONED LITIGATORS

In comparing views of lawyers admitted after 1979 to lawyers admitted before 1970, we must bear in mind that there is a large difference in the size of the cases the attorneys in these two groups tend to handle: 61 percent of the younger lawyers are typically involved in cases worth less than $50,000, whereas only 28 percent of the senior litigators are commonly involved in cases that small.

The percentage of lawyers who endorse the idea that settlement conferences should be mandatory in most cases in federal court is moderately higher in the younger group (76 percent) than it is in the group admitted before 1970 (69 percent). Similarly, young lawyers are more likely than seasoned litigators to prefer a settlement judge who actively offers suggestions and observations to one who simply facilitates communication (81 percent of those in the less experienced group express this preference compared to 71 percent in the senior group). Younger
lawyers are less likely to react adversely to the hard-boiled, aggressive style in settlement conferences (while 51 percent of the veterans condemn this approach as "counterproductive," only 39 percent of the less experienced group share this view), and they are less likely to rate either the gently persistent or the relaxed, informal approach as "very effective" (these two styles, respectively, are deemed "very effective" by 33 and 41 percent of those in the senior group but by only 24 and 26 percent of the more recent admittees).

PLAINTIFFS' LAWYERS AND DEFENSE COUNSEL

There is a startling pattern that emerges when we compare the views of the lawyers who spend most of their time representing plaintiffs to the opinions of those who are virtually always on the defense side. For every question that involves an active judicial role in settlement, the percentage of lawyers who respond positively is higher in the plaintiffs' group than in the defense group. Similarly, a larger percentage of the plaintiffs' lawyers give the highest effectiveness rating to each of the 13 techniques judges might use to facilitate settlement (the difference averages about 10 percent). The approval rate also is higher (by an average margin of 10 percent) among the plaintiffs' attorneys in 14 of the 15 questions that asked directly about the propriety of various kinds of judicial behavior in the settlement arena. (There was less than a 2 percent difference between the approval rates given by the two groups in response to the 15th question.)

The most dramatic disagreement is about whether a judge who believes that a party is about to accept an unreasonable settlement should encourage the litigant to reconsider its position. Sixty-nine percent of the defense attorneys believe a judge should take no action in this situation; only 36 percent of the plaintiffs' lawyers agree. While the magnitude of this difference is unusual, the thrust of the preference it reflects is not. For example, the percentage of lawyers who say they prefer a settlement judge who actively offers suggestions and observations to one who simply facilitates communication is 12 points higher in the plaintiffs' group (78 percent) than in the defense group (66 percent). Similarly, a larger percentage of plaintiffs' lawyers believe that settlement conferences should be mandatory in most cases in federal court (80 versus 70 percent).

There also are noteworthy differences of opinion about the effectiveness of two settlement techniques. Forty-nine percent of the plaintiffs' attorneys give the highest effectiveness rating to a settlement judge (not trial judge) in a nonjury matter who tells counsel the dollar range within which he or she believes a settlement reasonably should fall; only 32 percent of the defense attorneys give this technique a comparably high rating. The plaintiffs' group also offers more positive assessment of the assigned judge (in a jury matter) who points out evidence or law the attorneys misunderstand or overlook: 56 percent rate this technique "very effective," compared to 42 percent of the litigators in the defense group (the gap between the percentages approving the propriety of this technique also is 14 percent: 82 percent among the plaintiffs' attorneys and 68 percent among defense counsel).

There is another area of important difference between these two groups. Defense lawyers are more likely to be uncomfortable in settlement discussions with the assigned judge than are their opponents. The percentage of lawyers who believe it is improper for the judge who would preside at trial to become involved in settlement negotiations is consistently higher in the defense group than it is in the plaintiffs' group, regardless of whether the case is scheduled to be tried to a jury or a judge.

For example, 62 percent of those who are almost always on the defense side feel that the assigned judge should not participate in settlement talks in cases that would be tried to the court; the percentage of predominantly plaintiffs' lawyers who share this view is 50 percent. In a jury matter, only 49 percent of the defense group feel it is "proper" for the assigned judge, during a pretrial settlement conference, to articulate to counsel the dollar range of a reasonable settlement; in comparison, 65 percent of the plaintiffs' lawyers approve of this behavior. Given this pattern, it is not surprising that defense lawyers are somewhat more likely to say they would be more open in settlement discussions with a judge who would not preside at trial than with the assigned judge.

A final matter where differences between these two groups are substantial relates to potential judicial influence over clients. As reported earlier, it appears that judges' opinions are likely to have more clout with plaintiffs than with defendants. In cases where their client is reluctant to accept a settlement offer they deem reasonable, 65 percent of the plaintiffs' lawyers think that an indication by the judge that the offer is reasonable would have a great effect on their client's position. Among the defense lawyers, only 42 percent would expect their client to be greatly affected by such a judicial opinion (another 44 percent of the defense attorneys foresee a moderate effect on their client, while 27 percent of the plaintiffs' lawyers predict this lesser impact). This difference in lawyers' perceptions about the extent of judicial influence over clients may account for the fact that the only facilitation technique rated proper by a smaller percentage of plaintiffs' lawyers than defense attorneys is the one that consists of a settlement judge describing to clients the cost of trial (including attorneys' fees).

SMALL AND BIG CASE LITIGATORS

The most interesting generalization that emerges from comparing the views of lawyers who typically litigate cases worth less than $50,000 with the opinions of attorneys whose cases commonly involve more than $1 million is that there are relatively few substantial differences in the two patterns of responses. Moreover, the differences that do exist do not cut in one uniform direc-
tion. Big case lawyers are somewhat more likely to endorse some kinds of judicial activism in settlement, but for other kinds of activism there is proportionately greater support among the smaller case attorneys.

For example, the notion that federal judges should try to facilitate settlement in cases where they have not been asked to do so is greater among the big case litigators (77 percent) than it is among lawyers who work for the most part on smaller matters (68 percent). On the other hand, smaller case litigators are more likely to support the idea of requiring counsel to meet with the judge shortly after a matter is at issue to streamline case development by identifying undisputed facts and law (68 percent of the smaller case people sanction this proposal, compared to 54 percent of their big case colleagues). Similarly, there is less resistance in the smaller case group to a judge taking some action to encourage a party to reconsider when the judge believes the party is about to accept an unreasonable offer (57 percent of the big case lawyers object to judicial intervention for this purpose, compared to 50 percent of the smaller case attorneys).

By contrast, there is greater hostility in the smaller case group to the hard-boiled, aggressive judicial approach to settlement negotiations: 47 percent of the small case lawyers deem this style “counterproductive,” compared to 37 percent of the big case litigators. And while smaller case attorneys are more apt to be enthusiastic about the effectiveness of a settlement judge (not the judge assigned for trial) suggesting a dollar range for an agreement, they are less likely to be enthusiastic about a settlement judge privately suggesting concessions.

The biggest disagreement between these two groups is whether it would be wise policy to permit litigants to select the judicial officer to help them attempt to settle their dispute. While only 36 percent of the small case lawyers endorse this proposal, 56 percent of their large case counterparts would welcome such a policy. This difference may reflect a belief among lawyers that settlement facilitation is a more difficult task in bigger cases and that success as a facilitator in such cases requires subtle skills and special attributes of personality that are not evenly distributed among federal judges.

The final noteworthy difference between big and small case attorneys involves their relationships with clients. Small case lawyers are substantially more likely to encounter the problem of unreasonable resistance by their client to a settlement proposal they recommend accepting. Sixty-six percent of the big case litigators report experiencing this difficulty in less than 10 percent of their cases; among attorneys who normally handle small matters only 49 percent report a comparably rare incidence of this problem. The fact that the disparity in reported experience with unreasonably recalcitrant clients is greater between these two subgroups than any of the others we have isolated suggests that case size could be a useful predictor of this problem. As we noted earlier, another good predictor of client balk ing appears to be the level of experience of the attorney involved: in the subgroup of least experienced attorneys only 46 percent report encountering this problem in less than 10 percent of their cases.

**FIRM SIZE AND CASE SIZE**

There is a strong correlation between the size of the firms in which our respondents work, the size of the cases they are likely to be involved in, and the percentage of their time they are likely to commit to plain- tiffs’ matters. Nevertheless, the differences of opinion between the small firm (one to five attorneys) and big firm (more than 20 attorneys) generally are not as large as the differences that separate plaintiffs’ and defense attorneys. Nor do the differences between the small and large firm lawyers consistently cut in the same direction, as do the differences between the plaintiffs’ and the defense groups.

We do find substantial similarities, however, when we juxtapose the small case/big case comparisons with those between the small firm and big firm groups. There are relatively consistent parallels, in other words, between the views of the small firm and the small case lawyers, on the one hand, and, on the other, the big firm and the big case attorneys. These parallels make it unnecessary to do more here than point out the few instances where there are appreciable differences between the views of big firm and big case attorneys.

The big firm lawyers are less likely than the big case attorneys to endorse the propriety of the assigned judge articulating to counsel a dollar range for a reasonable settlement. The differences in these two groups’ views is greatest when the case would be court tried: the percentage of lawyers who believe it is “proper” for the assigned judge to articulate this kind of an opinion in a settlement conference in a nonjury matter is only 19 percent among the big firm lawyers, compared to 28 percent among the big case litigators. In fact, big firm lawyers are somewhat more hostile than big case lawyers to any form of involvement in settlement discussions by the assigned judge in nonjury matters (61 percent of the big firm group deem any such involvement “improper,” compared to 53 percent of the big case group).

Big firm lawyers are less likely than big case attorneys to feel that a judge’s opinion that a settlement proposal is reasonable will greatly affect the position of a balk ing client. Also as a group, they are less enamored than big case attorneys of the relaxed, informal judicial approach to conducting settlement conferences (only 25 percent in the big firm group rate this approach “very effective,” compared to 32 percent among the big case lawyers).

**LEGAL AID/PUBLIC INTEREST LAWYERS**

Because only 22 lawyers in our sample place themselves in the “legal aid/public interest” work-setting category we cannot generalize with confidence about the views of this group. There are a few matters, however, on which opinions expressed by these respondents diverge so dramatically from the norm that a brief description is warranted. Before describing this data, we point out that the lawyers in this subgroup tend to be
less experienced than the norm, to commit substantially higher percentages of their time to plaintiffs' matters, and to be involved, typically, in cases with much less money at stake than most lawyers in our sample.

Our data suggest that lawyers who practice in legal aid or public interest offices are much more likely than litigators generally to believe: (1) that involvement by federal judges in the settlement process significantly increases the likelihood that settlements will be fair to all concerned (64 versus 46 percent for the sample as a whole) and (2) that judges who believe that a party is about to accept an unreasonable settlement should take some step to encourage that party to reconsider its position (59 versus 29 percent for the sample as a whole).

Poverty and public interest litigators appear to be less likely than others to object to the assigned judge becoming involved in settlement discussions and, by wider margins, less likely to feel they would be more open in such discussions with a judge who would not preside at trial (46 versus 64 percent for the sample as a whole).

Two additional areas where the views of this group depart by large margins from the mainstream involve streamlining and disclosure requirements: 96 percent of the legal aid/public interest attorneys believe that in most cases the court should call counsel together shortly after the matter is at issue in order to identify undisputed facts and law; whereas, in the sample as a whole, 60 percent share this view. A similar gap separates the legal aid/public interest litigators from the others on the question of whether courts should compel parties to exchange settlement conference statements detailing their versions of key issues and describing their evidence: 82 percent in the public service group say "yes," compared to 54 percent for the entire sample.

Finally, there is a noteworthy difference between this group and others in assessment of the effectiveness of the judicial approach to settlement conferences that is relaxed, informal, and focuses on encouraging easy communication: in the sample as a whole only 34 percent rate this style "very effective"; in sharp contrast, 68 percent of the public service lawyers give this approach the highest effectiveness rating.

**COMPANY LAWYERS**

The number of lawyers who categorize their work setting as "employed by private company (corporate or house counsel, legal department of insurance company, etc.)" also is too small to support reliable generalization. Like the public service group, however, the views of these lawyers on several areas are too distinctive to go unreported. To help place these responses in context, we note that the respondents in this subgroup tend to be more experienced than the norm, to spend much more of their time in the defense side than lawyers in the sample as a whole, and, to a lesser extent, to be involved in bigger cases. It also is worth noting that responses from these lawyers are the best clues from our data about what institutional clients want from the judiciary in the settlement arena.

Viewed in the aggregate, the responses to our ques-

**Summarization**

**SUMMARY**

*The authors present a detailed analysis of lawyer preferences regarding judicial involvement in settlement processes, focusing on differences between legal aid/public interest and company lawyers. The study reveals that company lawyers are more likely to favor active judicial involvement, especially in cases where litigants are about to accept unreasonable settlements.*

**Key Findings**

- Company lawyers are more likely to support judicial involvement in settlement processes, particularly when litigants are about to accept unreasonable settlements.
- Legal aid/public interest lawyers are less likely to object to judicial involvement and are more open to discussions with judges not presiding at trial.
- Differences in the views of company lawyers are most pronounced with respect to four of the techniques examined: (1) requiring counsel to detail their versions of key issues and describing their evidence prior to settlement conferences; (2) calling counsel together shortly after the matter is at issue; (3) compelling parties to exchange settlement conference statements detailing their versions of key issues; and (4) encouraging litigants to reconsider their settlement positions.

**Implications**

- The findings suggest that active judicial involvement can be beneficial, especially when litigants are close to accepting unreasonable settlements.
- Legal aid/public interest lawyers may benefit from greater engagement with the judiciary in settlement processes to ensure fairness in all cases.

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*Note: The full text includes detailed statistical analysis, case studies, and comparisons that are not fully summarized here.*