GUIDELINES FOR THE NEUTRAL CASE EVALUATOR

The Circuit Court and the Fairfax Bar implemented the Neutral Case Evaluation Program in 1993 to assist in early settlement of cases**.** The focus of the NCE Program is on specific cases: (1) bodily injury & property damage, (2) medical & professional malpractice, (3) other injury to person or reputation, (4) injury to business or commerce, and (5) contractual disputes.

The benefits of NCE Program include: saving in judge time for formal settlement conferences; streamlining of often time-consuming discovery processes; and an increased number of pre-trial settlements. Implementation of this program reflects the desire expressed by both the Bench and the Bar to make litigation less expensive and burdensome for clients.

Neutral Case Evaluation differs from traditional Settlement Conferences in front of a judge in that volunteer attorneys review cases and advise the parties on the strengths and weaknesses of their cases. The program enlists the aid of experienced members of our Bench and Bar and assigns to them the task of providing a neutral evaluation of cases scheduled for Settlement Conference before trial.

Selection as an NCE evaluator was based on your substantial experience in the practice of law. Participation in the program requires a commitment to conduct NCE Settlement Conferences approximately one day per quarter in your office or other agreed upon location.

As an NCE evaluator you have broad discretion in structuring the conference, which is not governed by formal rules of evidence or examination. Generally, the NCE evaluator seeks to include the following features in each conference:

- An oral presentation by each party or counsel;
- Identification of areas of agreement and stipulations;
- Exploration of settlement options;
- Estimates, where possible, of the likelihood and range of damages and verdicts;
- Estimates, where possible in domestic cases, of the likelihood and range of equitable distribution divisions and support awards;
- Development of an information-sharing or discovery plan to expedite settlement discussions; and
- A determination of what follow-up measures would contribute to case development or settlement.

ACTION BY THE NCE ATTORNEY

1. CHECK FOR POSSIBLE CONFLICTS

Review case assignment to verify that there is no conflict with counsel, parties, or any primary and secondary carriers providing coverage in the case. Inform the Case Management Office, room 321, in writing immediately, if there is any conflict so the case can be reassigned.

2. CALL ATTORNEYS OR FAX LETTER

Upon receiving case assignment, call attorneys or fax a letter stating you are the NCE evaluator assigned to the case and request to have Settlement Statements faxed or mailed to you as well as any interrogatories, expert reports, VADER Support or Equitable Distribution Forms, or IME reports necessary for settlement. If an IME exam has yet to be completed, it may be necessary for the NCE evaluator to inquire as to whether the case should be rescheduled until after the discovery has been completed. In such instances, the NCE evaluator may agree to hear the case at a later date (if in the near future).

The Settlement Statements must be filed with the NCE evaluator no later than 5 days prior to the Settlement Conference.
If the parties fail to do so, they will be contacted by the NCE and instructed to do so. The confidential Settlement Statement is only seen by the NCE evaluator. It is immediately destroyed after the Settlement Conference.

3. CONDUCT NCE SETTLEMENT CONFERENCE

Inform parties of the conditions of NCE and have them sign a Statement of Understanding. General guidelines provided within these materials shall be used in structuring the conference. If one or more parties fail to arrive at the settlement conference in a timely manner, the evaluator should attempt to contact the parties and, if necessary, the Case Management Office in writing. In such instances, attorneys who fail to show up may be issued a Rule to Show Cause.

4. COMPLETE SETTLEMENT ORDER IF CASE SETTLES

If the case settles, have attorneys sign an Order of Settlement. If the attorneys agree to a settlement but wish to submit their own final order, have them sign a Suspending Order. This allows the Court to remove the case from the active trial docket and insures the parties' adequate time to submit a final amended order.

5. COMPLETE SETTLEMENT CONFERENCE STATUS SHEET

Prepare Settlement Conference Status sheet (blue form). The Status sheet is used by the court to gather statistical information.

6. SUBMIT THE FOLLOWING TO THE CASE MANAGEMENT OFFICE

After NCE Settlement Conference, the NCE evaluator should return the following to the Case Management Office, room 321.

- Completed Status Sheet (blue form)
- Order of Settlement (if appropriate)

7. COMPLETE FOLLOW-UP IF NECESSARY

NCE evaluators may agree to a follow-up phone call or discussion with parties, such follow-up leads to settlement. Please contact the Civil Case Management Office so that the case can be included as settled per NCE in the Court's statistics.

OTHER IMPORTANT INFORMATION

If one party fails to bring settlement authority or is quite uncooperative at Settlement Conference, please identify the party on the blue Status sheet and inform the Court of the nature of the problem. In such instances, a judge may wish to call the party to remind them that the status order they signed requires counsel to bring settlement authority and cooperate with court procedures.

If counsel involved in a case objects to an NCE evaluator based solely on the fact that the NCE evaluator normally represent defense or plaintiff in their own cases, and that is the sole basis for their objection, inform the counsel that the cases are randomly assigned to NCE evaluators by a judge. If they still have a problem they may contact the Case Management Office to alert the Court to the objection/problem. The case may be reassigned to a judge or another attorney NCE, if it is an objection that would interfere with the settlement process.