

Judicial Branch of Arizona  
in Maricopa County

Alternative Dispute Resolution (ADR)



# Probate Settlement Conference Training Manual

ELECTRONIC COPY AVAILABLE ON  
<https://superiorcourt.maricopa.gov/adr/>  
Click on [ADR resources for Judges Pro Tem](#)

Alternative Dispute Resolution  
Downtown Justice Center  
620 W. Jackson St., Suite 2049  
Phoenix AZ 85003  
602-506-7884  
FAX: 602-506-5836

[adroffice1@jbazmc.maricopa.gov](mailto:adroffice1@jbazmc.maricopa.gov)

(PREPARED & COMPILED BY MEL DAILEY, ADR PROGRAM COORDINATOR)

CURRENT AS OF: JANUARY 7, 2021

# **TABLE OF CONTENTS**

TABLE OF CONTENTS	2
PROBATE SETTLEMENT CONFERENCE ADMINISTRATIVE PROCEDURES FOR JUDGES <i>PRO TEMPORE</i>	3-5
*NOTICE OF SETTLEMENT CONFERENCE	6-7
*ORDER REGARDING FAILURE TO CONTACT JUDGE <i>PRO TEMPORE</i> TO SCHEDULE SETTLEMENT CONFERENCE	8-9
*PROBATE SETTLEMENT CONFERENCE REPORT	10
*AGREEMENT PURSUANT TO A.R.CIV.P. RULE 80(A)	11-13
*LINK TO PB SETTLEMENT CONFERENCE ON LINE SURVEY	14
SETTLEMENT CONFERENCE GUIDE	15-18
TOP TIPS FOR CONDUCTING SETTLEMENT CONFERENCES	19-20
COMMUNICATION TECHNIQUES FOR SUCCESSFUL NEGOTIATIONS	21
ESTABLISHING A POSITIVE EMOTIONAL CLIMATE	22

**\*THESE FORMS MAY BE DOWNLOADED FROM THE ADR WEBSITE.**

<https://superiorcourt.maricopa.gov/adr/>  
Click on [ADR resources for Judges Pro Tem](#)

**ALTERNATIVE DISPUTE RESOLUTION (ADR)  
PROBATE SETTLEMENT CONFERENCE  
ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE* (JPTs)**

- **Cases are referred to ADR by minute entry or scheduling order**

Upon receipt of referrals, cases are sorted and tickled for assignment to JPTs 90 days prior to the deadlines set by minute entries or scheduling orders. If the deadline is less than 90 days, ADR will request the Judge's division to extend the deadline to meet the minimum 90-day requirement.
  
- **Appointment of JPTs**
  1. Random appointment by using a database with JPTs sorted by date of appointment. The ADR Program Coordinator does not use a "conflict check" program. Conflict checks are accomplished manually by comparing JPT's address with attorneys' on the case being assigned to the JPT.
  2. JPT with the earliest date of appointment gets appointed first.
  3. Rotation varies, depending on the number of pending cases @ ADR.
    - Rotation is approximately every 45 days, but when pending cases start increasing in volume, appointment is between 30-35 days.
  4. Recusals: **IN THE INTEREST OF TIME, PLEASE NOTIFY ADR IMMEDIATELY BY USING ONE OF THE FOLLOWING:**
    - Notice of Recusal
    - Letter of Recusal
    - Recusal E-mail (e-mail the ADR Program Coordinator or [adroffice1@jbazmc.maricopa.gov](mailto:adroffice1@jbazmc.maricopa.gov))

Please ensure ADR is copied on the document you decide to use. Upon recusal, case will be reassigned to a new JPT and a new case will be assigned to the recused JPT. Please also ensure you notify parties/counsel of your recusal. If the recusal will result to extension of the deadline to conduct the settlement conference, the JPT is requested to instruct counsel to file a motion to extend the deadline with the assigned judge.
  5. JPTs on **HOLD** status (i.e., medical leave, trials) are skipped and are activated on the list when they become available\*
    - \*NOTE: Please call or e-mail the ADR Program Coordinator if & when you need to be put "ON HOLD STATUS". When "ON HOLD STATUS" has expired, the ADR Program Coordinator will start assigning you to ADR cases upon activation.
  
- **Upon receipt of the appointment notice, please download the following forms from the ADR website: <https://superiorcourt.maricopa.gov/adr/>**
  1. Certificate of Pro Tem Hours: Judge *Pro Tempore* fills out and sends to ADR, along with the Probate Settlement Conference Report (please send via fax, e-mail, or U.S. Mail).
  2. Probate Settlement Conference Report (please send completed form via fax, e-mail ([adroffice1@jbazmc.maricopa.gov](mailto:adroffice1@jbazmc.maricopa.gov)), runner service, or U.S. Mail).
    - To be filled out by the JPT
      - Upon conclusion of the settlement conference: When parties reach a FULL, PARTIAL, or NO SETTLEMENT
      - When parties settle prior, when parties decide to go to a private mediator, when parties fail to contact the Judge *Pro Tempore* within 10 days of receipt of the notice of appointment of the JPT, or when JPT is notified by parties that case has been dismissed and a settlement conference is no longer necessary
  3. Agreement Between the Parties Pursuant to A.R.Civ.P. Rule 80(a) (as needed): Please fill in the appropriate information and have parties/counsel

sign the form and send original to ADR for filing or your office may e-file the original and a copy forwarded to ADR, along with the settlement conference report. JPT is requested to provide copies to counsel/parties.

4. Notice of Probate Settlement Conference (as needed): Please fill in the appropriate information, sign and date the bottom, e-file original, **and forward a copy to ADR** via e-mail ([adroffice1@jbazmc.maricopa.gov](mailto:adroffice1@jbazmc.maricopa.gov)), fax (602-506-5836), runner service, or U.S. mail. Please mail/e-mail copies to parties/counsel. If you choose to use your own form or letter, please courtesy copy ADR by e-mail, fax, or U.S. mail. Note: If you need unrepresented parties' addresses, please e-mail [adroffice1@jbazmc.maricopa.gov](mailto:adroffice1@jbazmc.maricopa.gov).
5. Order Regarding Failure to Contact Judge *Pro Tempore* to Schedule Settlement Conference (as needed): Please fill in the appropriate information, sign and date the bottom, e-file original, **and forward a copy to ADR** via e-mail ([adroffice1@jbazmc.maricopa.gov](mailto:adroffice1@jbazmc.maricopa.gov)), fax (602-506-5836), or U.S. mail. Please mail/e-mail copies to parties/counsel. If you choose to use your own form or letter, please courtesy copy ADR by e-mail, fax, runner service, or U.S. mail. Note: If you need self-represented parties' contact information, please e-mail [adroffice1@jbazmc.maricopa.gov](mailto:adroffice1@jbazmc.maricopa.gov)
6. **Scheduling the Settlement Conference (NOTE: PLEASE KEEP ADR INFORMED ON THE STATUS OF YOUR CASES; ALTHOUGH ADR IS PART OF THE JUDICIAL BRANCH, ADR IS NOT ALWAYS COPIED ON MOTIONS, NOTICES OF SETTLEMENT, ETC., FILED BY PARTIES/ATTORNEYS.)**
  - Counsel/parties have 10 calendar days, upon receipt of the notice, to contact the JPT to schedule the settlement conference. If counsel/parties fail to contact the JPT within the days specified above, JPT should prepare the Order Regarding Failure to Contact Judge *Pro Tempore* to Schedule Settlement Conference (see instructions on #5 above). The settlement conference must be conducted per deadline set on the notice of appointment.
  - If and when deadline needs to be extended due to counsel's/parties' schedule conflict, JPT should instruct counsel to file a motion to extend the deadline with the judge assigned to the case. **NOTE: The JPT does not have the authority to extend the deadline to conduct the settlement conference. The motion to extend the deadline to conduct the settlement conference should go to the judicial officer assigned to the case.**
  - If the JPT is unable to meet the deadline, the JPT may request ADR to either reassign the case to a new JPT or ask ADR to request an extension of the deadline from the judicial officer assigned to the case. As soon as an extension is granted by the judicial officer assigned to the case, a minute entry will be generated by the judicial officer's division.
  - Once the settlement conference is scheduled, please make sure to send a copy of the notice to ADR. ADR will then enter the date/time of the settlement conference on ADR's database and Integrated Court Information System (iCIS). **NOTE: For cases that require an interpreter (examples: Spanish, Mandarin, Arabic, etc.), please email [adroffice1@jbazmc.maricopa.gov](mailto:adroffice1@jbazmc.maricopa.gov) to request an interpreter. ADR will then send the request to Court Interpretation and Translation Services (CITS) to send the interpreter to the location determined by the JPT.**
  - Probate Settlement Conference On Line Survey Form: **The link to the PB Settlement Conference On Line Survey is:** <http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDisputeResolution/pbSurvey/>

**PLEASE PROVIDE THIS LINK TO LITIGANTS AND COUNSEL.**

All party information remains confidential. The comments are shared with the individual JPT at the end of the fiscal year.

**Court Files:** To view records remotely, the JPT needs to first register with the Electronic Court Record Online (ECR Online) at <https://ecr.clerkofcourt.maricopa.gov/login.aspx>. Email a copy of the order naming the attorney as JPT to the customer support email address: [efilesupport@cosc.maricopa.gov](mailto:efilesupport@cosc.maricopa.gov) or fax the document to the Clerk's Office at 602-372-8751. In the email or fax to the Clerk's Office, include the case number and JPT's name as well as preferred contact information in case Clerk staff needs to follow-up. Office staff will manually add the case number to the JPT's list of viewable cases within ECR Online and will email confirmation when the case is added, typically by the next business day. This customer service enhancement improves access for customers and allows the Clerk of the Court's Office to better manage its limited resources.

- **Upon conclusion of the settlement conference,** the Judge *Pro Tempore* must ensure that the settlement conference report and certificate of pro tem hours form are e-mailed, faxed, mailed, or delivered to ADR via runner service.
  
- **Processing of settlement conference reports**
  1. Upon receipt of completed report from JPT:
    - Via US mail or runner service: ADR scans report, updates iCIS and ADR's records, and e-mails copy to the assigned judicial officer.
    - Via e-mail: ADR forwards report to the assigned judicial officer and updates iCIS and ADR's records.
  2. The reports are also used to generate ADR's statistics.
  3. ADR is required to submit monthly SC statistics to Court Administration. JPTs are requested to submit their SC reports to ADR immediately after the settlement conference. If a settlement conference is not held, please fill out the report form and mark appropriate result. Please write a brief note of what happened in the comment section. **It is imperative that each JPT return the report even if the settlement conference does not take place. This assures that our records and statistics are as accurate as possible.**
  
- **Statistics:**
  1. At the end of each fiscal year, ADR issues a statistical report to each JPT. The report includes a statistical breakdown of the settlement agreement rate and evaluation comments.
  2. The fiscal year statistical report is sent to Probate Court Presiding Judge, Probate Court Administrator, and Court Administration.

**ADR'S ADDRESS:**

ALTERNATIVE DISPUTE RESOLUTION  
DOWNTOWN JUSTICE CENTER  
620 W. JACKSON ST., SUITE 2049  
PHOENIX AZ 85003

**E-MAIL ADDRESS:** [adroffice1@jbazmc.maricopa.gov](mailto:adroffice1@jbazmc.maricopa.gov)

**PHONE NUMBER:** 602-506-7884

**FAX NUMBER:** 602-505-5836

Judge *Pro Tempore*: \_\_\_\_\_, State Bar No. \_\_\_\_\_

\_\_\_\_\_  
Phone: \_\_\_\_\_

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

**IN THE MATTER OF:**

**Case No.: PB \_\_\_\_\_**

**NOTICE OF SETTLEMENT  
CONFERENCE**

This case having been assigned to the undersigned for the purpose of holding a settlement conference,

IT IS HEREBY ORDERED that the settlement conference in the above-referenced matter is scheduled on \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_. The hearing is to be held at the following location:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The parties or, if represented, their attorneys, must submit settlement conference memoranda in accordance with the notice that appointed the Judge *Pro Tempore*.

Dated this \_\_\_\_ day of \_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_  
Judge *Pro Tempore*,

ORIGINAL of the foregoing filed and COPY of the foregoing mailed

This \_\_\_day of \_\_\_\_, 20\_\_

\_\_\_\_\_  
Attorney for Petitioner (s)

\_\_\_\_\_  
Attorney for \_\_\_\_\_

Alternative Dispute Resolution  
Downtown Justice Center  
620 W. Jackson St., Suite 2049  
Phoenix AZ 85003

Honorable \_\_\_\_\_

Judge *Pro Tempore*: \_\_\_\_\_, State Bar No. \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

**IN THE MATTER OF:**

\_\_\_\_\_

\_\_\_\_\_

Case No.: PB \_\_\_\_\_

**ORDER REGARDING FAILURE TO  
CONTACT JUDGE *PRO TEMPORE* TO  
SCHEDULE SETTLEMENT  
CONFERENCE**

Pursuant to Court's Alternative Dispute Resolution Probate Settlement Conference Notice dated \_\_\_\_\_20\_\_\_\_, the parties were instructed to contact the assigned Judge *Pro Tempore* within ten (10) days of receipt of the order for the purposes of scheduling the settlement conference in the above-referenced matter. As of \_\_\_\_\_20\_\_ the parties have failed to contact the undersigned in order to schedule the court-ordered settlement conference.

**IT IS ORDERED** that the parties in the above-referenced matter must contact the assigned Judge *Pro Tempore* within seven (7) days of the filing of this order. If the parties fail to contact the assigned Judge *Pro Tempore* within seven (7) days, sanctions may be imposed and/or above-referenced matter will be sent back to assigned judicial officer for further action(s).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Judge *Pro Tempore*,



ORIGINAL of the foregoing filed and COPY of the foregoing mailed

This \_\_day of \_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Attorney for Petitioner (s)

\_\_\_\_\_

Attorney for \_\_\_\_\_

\_\_\_\_\_

Alternative Dispute Resolution  
Downtown Justice Center  
620 W. Jackson St., Suite 2049  
Phoenix AZ 85003

Honorable \_\_\_\_\_

Judicial Branch of Arizona in Maricopa County  
Alternative Dispute Resolution  
Downtown Justice Center  
620 W. Jackson St., Suite 2049  
Phoenix, AZ 85003

Office (602) 506-7884

Fax (602) 506-5836

## PROBATE SETTLEMENT CONFERENCE REPORT

Please complete this report, along with the certificate of pro tem hours, and return forms to ADR **upon conclusion of the settlement conference.** Please address correspondence to ADR, using the above address and/or fax number or e-mail to: [adroffice1@jbazmc.maricopa.gov](mailto:adroffice1@jbazmc.maricopa.gov).

Judge Pro Tempore: \_\_\_\_\_

Assigned Judicial Officer: \_\_\_\_\_

Case#: \_\_\_\_\_

IN THE MATTER OF: \_\_\_\_\_

Date of Settlement Conference: \_\_\_\_\_

FULL SETTLEMENT    PARTIAL SETTLEMENT    CASE NOT SETTLED

OTHER:

- SETTLED PRIOR
- FAILED TO APPEAR
- VACATED
- VACATED (TO BE RESET @ A LATER DATE)
- TENTATIVE AGREEMENT
- PRIVATE MEDIATION
- PRIVATE ARBITRATION
- TERMINATED
- FAILED TO CONTACT JPT
- CONTINUING TO SUBSEQUENT SESSION
- SEE REMARKS BELOW

PARTIES PARTICIPATED IN GOOD FAITH:    YES    NO

PARTIES IN ATTENDANCE HAD AUTHORITY TO SETTLE:  
 YES    NO    N/A

REMARKS:

DATE: \_\_\_\_\_

\_\_\_\_\_  
JUDGE PRO TEMPORE

JUDICIAL BRANCH OF ARIZONA  
**IN MARICOPA COUNTY**  
**ALTERNATIVE DISPUTE RESOLUTION**

**IN THE MATTER OF:**

\_\_\_\_\_

**Case Number** \_\_\_\_\_

**Agreement Pursuant to  
A.R.Civ.P. Rule 80(a)**

- FULL SETTLEMENT**  
 **PARTIAL SETTLEMENT**

**This is the time set for the Settlement Conference held** \_\_\_\_\_

before Judge *Pro Tempore* \_\_\_\_\_.

The assigned Judicial Officer on this case is \_\_\_\_\_

**Attending this conference are:**

- Petitioner    Petitioner's Counsel    Other (specify person and interest/status)  
 Interpreter

**The  parties and  all interested persons in this matter have completed the settlement conference and have reached the following agreement. It is the intention of all undersigned that the following be construed as a binding agreement pursuant to Rule 80(a) of the Arizona Rules of Civil Procedure:**

\_\_\_\_\_  
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**PETITIONER (S):**

\_\_\_\_\_  
Petitioner      Print Name

\_\_\_\_\_  
Petitioner's Signature

\_\_\_\_\_  
Petitioner      Print Name

\_\_\_\_\_  
Petitioner's Signature

\_\_\_\_\_  
Petitioner      Print Name

\_\_\_\_\_  
Petitioner's Signature

\_\_\_\_\_  
Petitioner      Print Name

\_\_\_\_\_  
Petitioner's Signature

\_\_\_\_\_  
Counsel for Petitioner      Print Name

\_\_\_\_\_  
Counsel for Petitioner's Signature

\_\_\_\_\_  
Counsel for Petitioner      Print Name

\_\_\_\_\_  
Counsel for Petitioner's Signature

\_\_\_\_\_  
Counsel for Petitioner      Print Name

\_\_\_\_\_  
Counsel for Petitioner's Signature

\_\_\_\_\_  
Counsel for Petitioner      Print Name

\_\_\_\_\_  
Counsel for Petitioner's Signature

**OTHER (INTERESTED PERSONS/CAPACITY):**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Counsel      Print Name

\_\_\_\_\_  
Counsel's Signature

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Counsel      Print Name

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Counsel's Signature

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Counsel      Print Name

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Counsel's Signature

\_\_\_\_\_  
Counsel      Print Name

\_\_\_\_\_  
Counsel's Signature

ALTERNATIVE DISPUTE RESOLUTION (ADR)  
SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY  
602-506-7884

## **PROBATE SETTLEMENT CONFERENCE** **SURVEY**

This survey will only take 5 minutes of your time. Your feedback is important to us. This information will be used to inform the court system and the judge *pro tempore* about your experience with the settlement conference. In accordance with ADR Superior Court policy, this information is confidential. Below is the link to the online survey.

<http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDisputeResolution/pbSurvey/>

## Settlement Conference Guide

- What is a settlement. An agreement between parties that resolves some or all of the issues in litigation.
  - Settlement can
    - Be “full” or “partial”
    - Streamline issues that proceed to litigation
    - Allow stipulation of agreed upon facts
  
- The effective settlement negotiator must know how to discount litigation’s risks and rewards:
  - Know the facts, not necessarily completion of discovery
  - Know the applicable law
  - Communicate the range of probable outcomes
  - Rely on communication skills
  
- Remember: All cases settle at some point. If not in conference, there may be a good reason for proceeding to trial
  
- Why try to settle at a conference
  - Expense of litigation costs
  - Financial/emotional drain for parties
  - Time/difficulty collecting fees
  - Toll on the court system and taxpayer
  
- Settlement: Generally, most satisfying outcome
  - Based on what’s fair, not what parties are asking for
  - Parties have “day in court”
  - Attorneys can avoid complete loss for client
  - Judge gets satisfaction of helping parties reach agreement
  
- Justice is served
  - Settlements avoid extreme results
  - Provide positive satisfaction with court system
  
- Effective Settlement Conference Techniques
  - Use basic mediation techniques (Getting to Yes by Fisher & Ury)
  - Personalities impeding case resolution? Identify hidden emotional agendas
  - Use effective listening: Watch what is being communicated, not just what’s being said
  - Focus on “interest” not “positions”: What do parties really need to move on?

- Help parties find creative (non-monetary) alternatives: What can one party do for the other party more easily than that party can do for themselves?
- Maintain a rational, problem-solving focus for negotiations



## Judicial Settlement Conference Outline

- I. Introduction of Settlement Conference Judge
- II. Explain How Settlement Conference Will Proceed
  - A. Settlement Conference Judge's Initial Comments
    - 1. Purpose & Benefits of Settlement Conference
    - 2. Role of Settlement Conference Judge
    - 3. Settlement Conference Rules
  - B. General Session with All Parties
    - 1. If you don't want to say something in the general session, just say you would prefer to discuss the matter in caucus
  - C. Caucuses
    - 1. Obtain permission for *ex parte* caucuses
    - 2. Parties should not infer anything from length of caucus sessions
- III. Settlement Conference Judge's Initial Comments
  - A. Purpose & Benefits of Settlement Conference
    - 1. Parties should feel they are here voluntarily
    - 2. Opportunity to resolve case amicably
    - 3. Control outcome of the case
    - 4. Eliminate risk and make outcome certain
    - 5. Reduce/eliminate costs:
      - a. Attorney fees & costs
      - b. Time off of work
      - c. Travel expenses
    - 6. Make most efficient use of time and energy
    - 7. Minimize/eliminate emotional drain
    - 8. Opportunity for parties themselves to talk directly to one another and to a neutral
    - 9. Only opportunity for parties to freely express themselves
    - 10. Opportunity to craft resolutions/outcomes that the Court, absent agreement, cannot order.

IV. Role of Settlement Conference Judge

- A. Neutral
- B. Facilitate discussion and resolution of case
- C. Find common ground
- D. Find solution/resolution that is mutually acceptable to the parties
- E. Not determine who is right or wrong
- F. Not decide the case
- G. But may offer candid evaluation as to the merits of the parties'

positions

V. Settlement Conference Rules

- A. Confidentiality
  - 1. Nothing can be used in court
  - 2. Preservation of notes
  - 3. Settlement conference judge will not disclose comments to other side without consent
  - 4. Settlement conference judge cannot be called as a witness
- B. No disparaging comments
- C. Parties to negotiate in good faith
- D. Parties are free to leave at any time if they do not believe process is productive
- E. If a break is needed, just ask
- F. Assume the settlement conference judge will share with the other side what you have said in caucus unless you expressly ask the settlement conference judge to keep the information confidential.

V. Initial Thoughts/Comments/Questions

- A. Comments
  - 1. Good lawyers on both sides
- B. Questions

What to do when parties settle: Always get agreements on the record with attorneys/parties present and their affirmation of settlement terms

## Top Tips for Conducting Settlement Conferences

1. The Judge should be proactive in trying to resolve the issues in the case.
2. Create an environment conducive to settlement. Set the tone to encourage compromise and conciliation.
3. Make an introductory statement:  
Explain the purpose of the conference:
  - To organize and clarify the issues for trial, settling issues that can be settled; issue any orders necessary to that end.
  - Let parties know that you understand the seriousness of the matter and the emotional issues they are facing.
  - Let parties know they don't have to settle; however, if they can work out their differences, it will save everyone significant time, frustration and expense.
  - Let parties know they have a right to trial, but sometimes the Judge makes a decision that no one likes. By working on a settlement, they can reach an agreement that meets their family's needs.
  - Encourage parties to be open about compromise. You are not the trial judge. Therefore, efforts at compromise will not be used against them at trial.
4. Be aware of the attorneys' need to preserve their relationship with their client. Some nice words about the lawyers in the presence of their clients will tend to reduce obstruction from counsel.
5. Recognize the attorneys' roles. Allow each attorney to make a brief "opening statement" regarding issues not yet resolved. Keep these statements to a minimum. Save the bulk of time for finding solutions.
6. Act as a sounding board for the issues. Parties and attorneys may be looking for feedback from the Judge. Be proactive and address the issues, making appropriate comment on the law as applied to these facts.
7. When parties begin by stating no agreement is possible, explore easy issues first to see if you can limit disagreements.
8. Think creatively. Create options or suggest alternatives that the attorneys may not have foreseen or could not suggest themselves.
9. Be a good listener. Identify and deal with emotional issues that may be impeding settlement.
10. Remain neutral even if you are inclined to side with one party
  - Avoid caucus or it could be construed as siding with one party
  - Avoid any appearance of favoring one side or one attorney. If you call one attorney by a first name, address the other attorney in the same manner.
  - Acknowledge aloud that each party's feelings are genuine about their positions, but your hope is to discover what they really need to move on and put this litigation behind them.
11. Complete unfinished discovery. If a party has not cooperated with discovery requests or not carried out pre-trial orders, issue orders to timely gain the information and include sanctions for non-compliance.

12. Keep control of the proceedings. Proceed methodically. Don't accept a statement that no settlement is possible. Your job is to explore.
13. Address topics one at a time. When possible, nail down agreements before going on to the next topic.
14. Start with easy things first, such as personal property, debts, who gets what car, etc. This helps get people in the mood to settle.
15. Be a facilitator, not a bully. People are more satisfied when they think they have voluntarily come to their own decisions.
16. In most cases, one or two issues are important to each party. They are not always the same issues. Find them. They will negotiate everything else.
17. Compliment attorneys on the work they have done, but let parties know that even though these attorneys will work hard for them, by settling this case they will save significant attorneys' fees. Remind people of the benefits of settlement, in terms of money, time, and trauma.
18. Take charge when settlement is imminent on an issue. Do not let it slip away before you get both parties to commit.
19. In reaching settlement, you want to terminate all ties that you can, so that parties do not have to worry about ongoing contact (except with regard to children).
20. When telling a party that the court will not sustain their position, watch for their lawyer's reaction. If it is quiet and passive, it's probably reinforcing what the lawyer has already told the client.
21. Inform unreasonable people quickly if they will not be successful in court on a point.
22. Start by identifying areas of agreement. This is a good tactic to encourage further agreement. Help avoid distraction by areas of disagreement.
23. Think of contingencies for the future, such as parties moving out of state, visitation when children get older, etc.
24. If the case settles, swear both parties in, have both parties say that they understand and approve of the settlement terms and consider the terms fair and equitable. State which lawyer will prepare the decree, that any judge can sign the decree, and that objections to the form of decree, if any, will be heard by you.
  - Prepare a clear, detailed and complete settlement order
    - When dictating settlement terms, be specific to ensure that the agreement is clear and understandable.
    - If easier, dictate settlement terms as they are reached on each issue (although this may be difficult if parties revise terms).
25. Even if no settlement, encourage parties/attorneys to continue to negotiate. Seeds of settlement can be planted at the conference that result in subsequent agreements.

## **COMMUNICATION TECHNIQUES FOR SUCCESSFUL NEGOTIATIONS**

1. **Restatement** – The settlement judge listens to what has been said and repeats the content to the party in the party's own words.
2. **Paraphrase** – The settlement judge listens to what has been said and restates the content to the party using different words that have the same meaning as the original statement. This is often called *translation*.
3. **Active Listening** – The settlement judge decodes a spoken message and then feeds back to the speaker. This is commonly used in conciliation.
4. **Summarization** – The settlement judge condenses the message of a speaker.
5. **Expansion** – The settlement judge receives a message, expands and elaborates on it, states it back to the listener, and then checks to verify accurate perception.
6. **Ordering** – The settlement judge helps a speaker organize ideas into a sequence (historical, size, importance, amount, and so forth).
7. **Grouping** – The settlement judge helps a speaker identify common ideas or issues and combine them into logical units.
8. **Structuring** – The settlement judge assists a speaker to organize and arrange his or her thoughts and speech into a coherent message.
9. **Separation or Fractionating** – The settlement judge divides general points or principles in a speaker's component parts.
10. **Generalization** – The settlement judge identifies general points or principles in a speaker's presentation.
11. **Probing Questions** – The settlement judge asks questions to encourage a speaker to elaborate on an idea.
12. **Questions of Clarification** – The settlement judge asks questions to encourage the speaker to give further information about a point in question.

**The settlement judge can enhance communication between disputants by encouraging disputants to use communication skills, by teaching disputants how to use them, and by reinforcing their use by commending parties who utilize them.**

## **ESTABLISHING A POSITIVE EMOTIONAL CLIMATE**

In addition to facilitating communication, the settlement judge often must create an emotional climate conducive to clear communication and joint problem solving. Interventions related to promoting a positive emotional climate include:

- Preventing interruptions or verbal attacks.
- Encouraging parties to focus on the problem and not each other.
- Translating judgmental language of disputants into less emotionally charged terms.
- Affirming clear descriptions or statements, procedural suggestions, or gestures of good faith while not taking sides on substantive issues.
- Accepting the expression of feelings and being empathetic while not taking sides.
- Reminding parties about behavioral guidelines that they have established.
- Intervening to prevent conflict escalation.