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October 6, 2009

Karla M. Shultz, Esquire
Supreme Court of Pennsylvania
Civil Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue
Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635

Re: Proposed Recommendation No. 239
Governing Pre-Trial Conferences and
Settlement Conferences

Dear Ms. Shultz:

I am Co-Chair of the Philadelphia Bar Association's State Civil Litigation Rules and Procedure Committee. My Committee discussed proposed Rule Recommendation No. 239 which proposes amendments to Rule 212 governing pre-trial and settlement conferences. The Committee is bipartisan and consists of both plaintiff and defense lawyers.

This proposal was discussed at length at our meeting held on September 18, 2009. This letter is being written on behalf of my Committee and the State Civil Litigation Section of the Philadelphia Bar Association.

At the conclusion of our meeting, a resolution was unanimously adopted in opposition to the proposal as drafted, particularly the portion that would mandate the presence of a representative

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of an insurance company at these conferences.

Portions of the proposed rule change pertaining to both the pre-trial conference and the settlement conference contains the language to the effect that "a court may require, pursuant to a court order...an insurance or similar representative, who has complete authority...to settle the case, to attend the pre-trial conference." The new settlement conference language tracks the foregoing language relating to pre-trial conferences mandating the presence of an insurance or similar representative "unless the court permits the representative to ensure that he or she will be available by telephone."

Serious legal issues are presented should authority be conferred upon a judge sitting in the court of common pleas to compel the attendance of a non-party and/or out of state citizen to appear at such conferences. Many times the insurance carrier's representative assigned to a particular claim is out of state. To require such a person to attend these conferences would also impose an unwarranted and onerous expenditure of time and resources.

We also voice concern as to what the meaning and intent of the phrase "complete authority" is intended to convey. Prior to attending such conferences, counsel for both sides have presumably conferred with their respective clients and should attend with the "reasonable authority" necessary to negotiate and effectuate, if possible, a settlement in good faith.

We are in favor of having all parties' clients i.e. the plaintiff, as well as the insurance carrier/defendant, "promptly available by telephone", as an additional aid to the Court in an effort to settle cases.

We respectfully suggest as a model the practice currently in place in the Philadelphia County Court of Common Pleas wherein counsel must have settlement authority and/or the claims adjuster available by telephone with the added proviso as noted above, that the plaintiff be similarly available by phone to his/her counsel.

The Philadelphia Bar Association State Civil Litigation Section and its Rules and Procedure Committee thank you for your continuing practice of submitting proposed Civil Rule Proposed Recommendations to us for comment and consideration. In turn, we welcome the opportunity for you to provide us with your comments

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and any further information that may guide us in our deliberations on such proposals. As always, you are welcome to attend our meetings, regularly scheduled in Philadelphia, when such topics are placed on our agenda.

Sincerely yours,

MARK N. COHEN
CO-CHAIR, CIVIL RULES AND PROCEDURE COMMITTEE

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