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[§ 15.1 INTRODUCTION](#)

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This chapter addresses the wide range of available settlement options, should the client decide to seek a negotiated outcome. Settlement can occur at any stage of the proceeding, from the seventy-two-hour hearing to the eve of trial and even after judgment while an appeal is pending. The chapter addresses placement with relatives, guardianships, open adoptions, and posttermination and postadoption contact, and provides tips for drafting settlement provisions to deal with particular circumstances. Please note that the name of the Department of Social Services (DSS) was changed to the Department of Children and Families (DCF) in 2008. Both designations may appear in this chapter; they are interchangeable.

Settlement is one of a number of advocacy tools available to counsel for parents and children in state intervention proceedings. The decision to settle is the client's and can be made only after counsel has fully advised the client of all the relevant factors to be considered. Because typically the facts of a case will continue to evolve during the course of the proceeding, counsel must periodically reassess the pros and cons of settlement and advise the client accordingly.

In some cases, a negotiated settlement may be a sensible alternative to litigation for the client. For example, in a case where the evidence of a parent's unfitness is overwhelming, the parent may agree to a care and protection adjudication in order to avoid the possibility of a termination judgment, while obtaining more time to engage in services. Or, in a case where DSS seems set on a goal of adoption, but the child wishes to maintain legal ties to his or her parents, child's counsel may negotiate with DSS to accept a guardianship instead of going forward with a termination trial.

Counsel must fully advise the client of the benefits and drawbacks of settlement. Child clients, too, must be provided as much information as their age, development, and cognitive abilities will allow. Often, counsel must spend a great deal of time with the child or adult client, advising the client of the possible ramifications of going to trial, reviewing settlement proposals, and discussing counterproposals. Throughout these discussions, the client must be assured that counsel is ready, willing, and able to litigate if the client wants to proceed with a trial.

Counsel cannot properly advise the client about settlement, unless he or she has determined the strength and weaknesses of the opposing parties' case. This requires counsel to thoroughly explore all relevant facts, legal theories and arguments, and to determine what admissible evidence is available to support or undermine the client's case. The lawyer who has thoroughly investigated the facts and is prepared for trial will be better able to

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make a cogent argument in favor of the client's desired outcome. In addition, the client's opponents must understand that counsel is prepared and ready to mount a defense. The client's opportunity to reach a reasonable settlement is vastly improved if the opposing parties (and their attorneys) believe that they risk losing something (even if it is just time) by going to court.

The range of negotiated outcomes is broad. For example, parties may agree to a child returning home to a parent subject to conditions, to placement with a previous noncustodial parent, to guardianship with a relative, or to an "open" adoption whereby children and their birth parents can maintain contact after adoption. In addition, settlement can occur at various stages in the proceeding, including at the temporary custody hearing, prior to a care and protection or termination trial, during trial, and even after trial and judgment. If an appeal is pending, trial counsel must work cooperatively with the client's appellate attorney.

This chapter provides an overview of settlement in child welfare cases. It covers factors that influence settlement decisions, the settlement process, mediation, and the law governing agreements for posttermination and postadoption contact. [G.L. c. 210, §§ 3\(d\), 6C, 6D](#).

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