

Day #16: The Eleven Step Divorce Litigation Process, #8: The Early Settlement Panel “ESP”

Hi,

Thanks again for Subscribing. Today we continue through our “eleven steps” for a contested New Jersey Divorce. Today we review the Early Settlement Panel “ESP” process.

If you pursue New Jersey Divorce litigation long enough, you will eventually be required to attend an Early Settlement Panel.

This can be a confusing development for parties to a divorce who will each likely have many questions such as: what is an **early settlement panel**? Or: who makes up this panel, and what is its function?

Luckily, a New Jersey Early Settlement Panel is not as complicated as it may first appear to be.

New Jersey Early Settlement Panels: What Are They?

Essentially, a New Jersey Early Settlement Panel is a court-ordered form of **non-binding arbitration**. It is a required hearing under Court Rule 5:5-5. On the day of the early settlement panel, both parties and their attorneys will be scheduled to attend Court and have an audience with the Early Settlement panelists.

There, the panel members will usually meet first with the attorneys, and later with the parties. It should be noted, however, that procedures vary greatly amongst counties regarding Early Settlement Panel Hearings. Prior to the Early Settlement Panel day, for instance, most but not all counties/panelists will require some form of legal memorandum and/or legal documentation from each of the parties.

An Early Settlement Panel often takes the following format: the panelists ask the attorneys to review the major outstanding issues. The basic goal of every panel is to endorse or effectuate settlement. This is one of many ways the court system helps control its docket and attempt to reduce the amount of pending divorces within the County.

Parties' counsel will generally appear before the panel without clients and will each lay out their arguments. Thereafter, the parties will generally be brought in, and the panelists will give their opinions as to how they the panelists believe the Judge would decide the outstanding issues.

The underlying goal is that parties who have been advancing unsupportable positions will, upon learning that their positions are not likely to prevail, be more willing to drop those positions and enter into a fair settlement.

Since the decision is non-binding, however, the panelists cannot force the parties to be bound by their decision or to otherwise settle.

New Jersey Early Settlement Panels: Who Are The Panelists?

The panelists are generally two (2) experienced in-county family law attorneys. They are volunteering their time. I have volunteered my time to serve as an ESP panelist for Somerset County for the past few years.

Conclusion

Early Settlement Panels are important. Although Early Settlement Panels do not create a binding disposition of a case, they do shape the tenor of future negotiations. And the ESP hearing just might lead to a settlement.

Now, let's move on to step nine: Court Ordered Economic Mediation. If you haven't settled the case by this stage, you're nearing trial!

All the best,

Carl

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