

Defendant's Unreasonable Demands for Dismissal Prior to Negotiations

I filed a lawsuit in a business dispute.

Defendant offers to enter into negotiations but only if I first dismiss the lawsuit.

My client (correctly, I believe) refuses to meet this precondition, but is willing to negotiate (with the lawsuit still on file and time to respond ticking away).

Although it is not necessary, I want to explain to defendant's counsel, without using four letter words, why defendant's demand is inappropriate and unacceptable, in a letter that might be read by a judge one day.

Any suggestions would be appreciated.

Thank you.

"That's such a generous offer, but I can't accept that."

Dan X. Nguyen, California

I would think something like this:

I think I understand and appreciate your position; however, the only reason to negotiate is the fact that a lawsuit has been filed. Until we negotiate a settlement, the lawsuit will remain.

Or something like that?

Walter D. James III, Texas

Assuming you have a good case:

"I did not file a lawsuit as an entry to negotiations tactic. I filed it because I expect to win and obtain substantial damages for my client. I am happy to proceed with the case.

You have demanded that I dismiss the case as a precondition to negotiating. That is a ludicrous proposition and your demand is rejected.

Given the vast gap between your demands and anything my client would consider, it is clear that any settlement conversations are premature.

Your request is rejected; please file your answer within deadline, etc. etc.

Erik Hammarlund, Massachusetts

Just say no. The matter is on course to resolution.

Mike Phillips, North Carolina

Oh, and add – “Govern yourself accordingly “

Walter D. James III

That is a ridiculous request. It is already public. If you want to give them more time to respond or stay the case for a few weeks so they don't have to pay a filing fee, that is common and ok, but what if their agreement to negotiate means they will pay \$10 and you now have to re-file, pay again and hear BS arguments. I wouldn't use 4 letter words but I would tell them this is laughable and needs no explanation why it is laughable.

Mark H. Wagner

This OC sounds like a handful. Be prepared for them to demand a settlement offer. Again: Just say no. If THEY want to settle, THEY can initiate settlement with an offer.

Erik Hammarlund

"Your client has demanded the lawsuit be dismissed prior to commencing negotiating a settlement. On behalf of my client, I respectfully decline. Thank you for your professional consideration of this matter."

Darrell G. Stewart, Texas

How about "No, thank you."?

Don't waste your time explaining.

Good luck.

Russ Carmichael, Pennsylvania

What Erik said.

Bridget Butler, New York

Is there any reason (e.g., Statute of Limitations) you can't dismiss without prejudice, and tell counsel you are going to re-file in 30 days if the case isn't settled?

Scott I. Barer, California

I'll provide a contrary PoV—or at least a question.

Is there any business that the Defendant is involved in that requires that settled lawsuits must be disclosed in some way, even if the parties agree that there terms of the settlement are supposedly confidential?

If so, the defendant may have reason to insist that they will not settle while a lawsuit is pending. But if there is no "lawsuit pending," the defendant may be willing to settle on more generous terms—because they then do not need to disclose the terms of the settlement.

Just be sure (a) that your dismissal is without prejudice, and (b) that you are not bumping up against a statute of limitations. (Incidentally, on the latter issue, an agreement to waive the S/L may constitute something that must be disclosed if entered into while a lawsuit is pending.)

Brian H. Cole, California

Be careful dismissing without prejudice. A savvy defense attorney could file a cost bill if they incurred any costs.

Jonathan Stein, California

I wouldn't explain your client's position; it often comes across the wrong way. I would avoid any snarky remarks and keep your response very short.

Something like you appreciate the offer to enter negotiations, but decline to dismiss until negotiations produce a firm settlement agreeable to both parties.

Duke Drouillard, Nebraska

I do not think the defendant is being per se improper seeking a dismissal in the lawsuit in order to begin negotiations. An easy straight forward answer is to agree to extend time in which he is required to file a responsive pleading until XX days in order to give the parties an opportunity to resolve the matter. This is quite typical and is very productive. It allows the defendant to save money by not paying lawyer to file answer which in turn means more money for defendant to give your client. A 60-day extension to see if a resolution can be had is not unreasonable and a letter outlining that will show the judge you gave the defendant every opportunity to resolve the matter.

Dismissing a lawsuit has implications down the road such as res judicata, estoppel, etc. Not knowing your state's laws, hard to predict the "cost" of a dismissal. In Georgia, a plaintiff can dismiss a suit at any time and refile within 6 months. Usually, you save that dismissal for trial when you see your jury

and do not like the make-up of the jury. You do not want to prejudice your client by burning a dismissal if you can avoid it.

Robert "Robby" W. Hughes, Jr., Georgia

Dismissal w/o prejudice is usually a horrible idea. You are giving up a prime bargaining position.

Here's an example:

- You sue for \$100k on a contingent basis; you have them dead to rights but you hope you might settle for \$85-90k.
- You dismiss; they promptly pay your client \$60k.
- Now you have to fight about whether you are still entitled to your contingent fee (since there was no case active.) And you must then decide whether to take the risk of filing a contingent suit for the remaining \$40k, which is a harder sell, not to mention that you have lost the ability to paint the OP as "a skinflint who never paid a dime."
- The likeliest outcome is that you and your client both accept \$60k.

And it's all your fault for dismissing.

Why would you ever give up that kind of leverage? Shrug your shoulders and tell them to pound sand; you'll see them in court.

Erik Hammarlund

At some point the court will order us to attempt settlement. We can negotiate then.

Jordan Rosenberg, Paralegal, California

