

FFS RULES – EFFECTIVE DATE JANUARY 1, 2012

RULE 10. OTHER SETTLEMENT PROCEDURES

A. ORDER AUTHORIZING OTHER SETTLEMENT PROCEDURES.

Upon receipt of a motion by the parties seeking authorization to utilize a settlement procedure in lieu of a mediated settlement conference, the court may order the use of those procedures listed in Rule 10.B unless the court finds: that the parties did not agree upon the procedure to be utilized, the neutral to conduct it or the neutral's compensation; or that the procedure selected is not appropriate for the case or the parties. Judicial settlement conferences may be ordered only if permitted by local rule.

B. OTHER SETTLEMENT PROCEDURES AUTHORIZED BY THESE RULES.

In addition to mediated settlement conferences, the following settlement procedures are authorized by these Rules:

- (1) **Neutral Evaluation** (Rule 11), in which a neutral offers an advisory evaluation of the case following summary presentations by each party.
- (2) **Judicial Settlement Conference** (Rule 12), in which a district court judge assists the parties in reaching their own settlement, if allowed by local rules.
- (3) **Other Settlement Procedures** described and authorized by local rule pursuant to Rule 13.

The parties may agree to use arbitration under the Family Law Arbitration Act (N.C.G.S. § 50-41 *et seq.*) which shall constitute good cause for the court to dispense with settlement procedures authorized by these rules (Rule 1.C.6).

C. GENERAL RULES APPLICABLE TO OTHER SETTLEMENT PROCEDURES.

- (1) **When Proceeding is Conducted.** The neutral shall schedule the conference and conduct it no later than 150 days from the issuance of the court's order or no later than the deadline for completion set out in the court's order, unless extended by the court. The neutral shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the neutral shall select a date and time for the conference. Deadlines for completion of the conference shall be strictly observed by the neutral unless changed by written order of the court.

- (2) **Extensions of Time.** A party or a neutral may request the court to extend the deadlines for completion of the settlement procedure. A request for an extension shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the neutral. The court may grant the extension and enter an order setting a new deadline for completion of the settlement procedure. Said order shall be delivered to all parties and the neutral by the person who sought the extension.
- (3) **Where Procedure is Conducted.** Settlement proceedings shall be held in any location agreeable to the parties. If the parties cannot agree to a location, the neutral shall be responsible for reserving a neutral place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and *pro se* parties.
- (4) **No Delay of Other Proceedings.** Settlement proceedings shall not be cause for delay of other proceedings in the case, including but not limited to the conduct or completion of discovery, the filing or hearing of motions or the trial of the case, except by order of the court.
- (5) **Inadmissibility of Settlement Proceedings.** Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:
 - (a) In proceedings for sanctions under this section;
 - (b) In proceedings to enforce or rescind a settlement of the action;
 - (c) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or
 - (d) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, the term “neutral observer” includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this section or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties and in all other respects complies with the requirements of Chapter 50 of the

North Carolina General Statutes. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, other neutral or neutral observer present at a settlement proceeding under this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse.

(6) No Record Made. There shall be no stenographic or other record made of any proceedings under these Rules.

(7) Ex Parte Communication Prohibited. Unless all parties agree otherwise, there shall be no *ex parte* communication prior to the conclusion of the proceeding between the neutral and any counsel or party on any matter related to the proceeding except with regard to administrative matters.

(8) Duties of the Parties.

(a) Attendance. All parties and attorneys shall attend other settlement procedures authorized by Rule 10 and ordered by the court.

(b) Finalizing Agreement.

(i) If agreement is reached on all issues at the neutral evaluation, judicial settlement conference or other settlement procedure, the essential terms of the agreement shall be reduced to writing as a summary memorandum unless the parties have reduced their agreement to writing, signed it and in all other respects have complied with the requirements of Chapter 50 of the North Carolina General Statutes. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to its terms. Within 30 days of the proceeding, all final agreements and other dispositive documents shall be executed by the parties and notarized, and judgments or voluntary dismissals shall be filed with the court by such persons as the parties or the court shall designate.

- (ii) If an agreement is reached upon all issues prior to the neutral evaluation, judicial settlement conference or other settlement procedure or finalized while the proceeding is in recess, the parties shall reduce its terms to writing and sign it along with their counsel, shall comply in all respects with the requirements of Chapter 50 of the North Carolina General Statutes and shall file a consent judgment or voluntary dismissals(s) disposing of all issues with the court within 30 days, or before the expiration of the deadline for completion of the proceeding, whichever is longer.
 - (iii) When a case is settled upon all issues, all attorneys of record must notify the court within four business days of the settlement and advise who will sign the consent judgment or voluntary dismissal(s) *and when*.
- (c) **Payment of Neutral's Fee.** The parties shall pay the neutral's fee as provided by Rule 10.C.(12), except that no payment shall be required or paid for a judicial settlement conference.

(9) Sanctions for Failure to Attend Other Settlement Procedure or Pay Neutral's Fee. Any person required to attend a settlement procedure or pay a neutral's fee in compliance with N.C.G.S. § 7A-38.4A and the rules promulgated by the Supreme Court to implement that section who, fails to attend or to pay the fee without good cause, shall be subject to the contempt powers of the court and monetary sanctions imposed by the court. Such monetary sanctions may include, but are not limited to, the payment of fines, attorney fees, neutral fees, expenses and loss of earnings incurred by persons attending the procedure. A party to the action, or the court on its own motion, seeking sanctions against a party or attorney, shall do so in a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are being sought. If the court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law.

(10) Selection of Neutrals in Other Settlement Procedures.

Selection By Agreement. The parties may select any person whom they believe can assist them with the settlement of their case to serve as a neutral in any settlement procedure authorized by these rules, except for judicial settlement conferences.

Notice of such selection shall be given to the court and to the neutral through the filing of a motion to authorize the use of other settlement procedures at the scheduling conference or the court appearance when settlement procedures are considered by the court. The notice shall be on a

NCAOC form as set out in Rule 2 herein. Such notice shall state the name, address and telephone number of the neutral selected; state the rate of compensation of the neutral; and state that the neutral and opposing counsel have agreed upon the selection and compensation.

If the parties are unable to select a neutral by agreement, then the court shall deny the motion for authorization to use another settlement procedure and the court shall order the parties to attend a mediated settlement conference.

(11) Disqualification of Neutrals. Any party may move a court of the district in which an action is pending for an order disqualifying the neutral; and, for good cause, such order shall be entered. Cause shall exist, but is not limited to circumstances where, the selected neutral has violated any standard of conduct of the State Bar or any standard of conduct for neutrals that may be adopted by the Supreme Court.

(12) Compensation of Neutrals. A neutral's compensation shall be paid in an amount agreed to among the parties and the neutral. Time spent reviewing materials in preparation for the neutral evaluation, conducting the proceeding and making and reporting the award shall be compensable time. The parties shall not compensate a settlement judge.

(13) Authority and Duties of Neutrals.

(a) Authority of Neutrals.

(i) Control of Proceeding. The neutral shall at all times be in control of the proceeding and the procedures to be followed.

(ii) Scheduling the Proceeding. The neutral shall make a good faith effort to schedule the proceeding at a time that is convenient with the participants, attorneys and neutral. In the absence of agreement, the neutral shall select the date and time for the proceeding. Deadlines for completion of the conference shall be strictly observed by the neutral unless changed by written order of the court.

(b) Duties of Neutrals.

(i) The neutral shall define and describe the following at the beginning of the proceeding:

(a) The process of the proceeding;

(b) The differences between the proceeding and other forms of conflict resolution;

- (c) The costs of the proceeding;
 - (d) The admissibility of conduct and statements as provided by N.C.G.S. § 7A-38.1(1) and Rule 10.C.(6) herein; and
 - (e) The duties and responsibilities of the neutral and the participants.
- (ii) **Disclosure.** The neutral has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- (iii) **Reporting Results of the Proceeding.** The neutral evaluator, settlement judge or other neutral shall report the result of the proceeding to the court in writing within 10 days in accordance with the provisions of Rules 11 and 12 herein on a NCAOC form. The NCAOC, in consultation with the Commission, may require the neutral to provide statistical data for evaluation of other settlement procedures.
- (iv) **Scheduling and Holding the Proceeding.** It is the duty of the neutral to schedule the proceeding and conduct it prior to the completion deadline set out in the court's order. Deadlines for completion of the proceeding shall be strictly observed by the neutral unless said time limit is changed by a written order of the court.