

FFS RULES – EFFECTIVE DATE JANUARY 1, 2012

**RULE 4. DUTIES OF PARTIES, ATTORNEYS AND OTHER PARTICIPANTS
IN MEDIATED SETTLEMENT CONFERENCES**

A. ATTENDANCE.

(1) The following persons shall attend a mediated settlement conference:

(a) **Parties.**

(b) **Attorneys.** At least one counsel of record for each party whose counsel has appeared in the action.

(2) Any person required to attend a mediated settlement conference shall physically attend until such time as an agreement has been reached or the mediator, after conferring with the parties and their counsel, if any, declares an impasse. No mediator shall prolong a conference unduly.

Any such person may have the attendance requirement excused or modified, including allowing a person to participate by phone, by agreement of both parties and the mediator or by order of the court. Ordinarily, attorneys for the parties may be excused from attending only after they have appeared at the first session.

(3) **Scheduling.** Participants required to attend shall promptly notify the mediator after selection or appointment of any significant problems they may have with dates for conference sessions before the completion deadline, and shall keep the mediator informed as to such problems as may arise before an anticipated conference session is scheduled by the mediator. After a conference session has been scheduled by the mediator, and a scheduling conflict with another court proceeding thereafter arises, participants shall promptly attempt to resolve it pursuant to Rule 3.1 of the General Rules of Practice for the Superior and District Courts, or, if applicable, the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina on June 20, 1985.

B. FINALIZING AGREEMENT.

(1) If an agreement is reached at the conference, the parties shall reduce to writing the essential terms of the agreement.

(a) If the parties conclude the conference with a written document containing all the terms of their agreement, signed by all parties and

formally acknowledged as required by N.C.G.S. § 50-20(d) for property distribution, the mediator shall report to the court that the matter has been settled and include in the report the name of the person responsible for filing closing documents with the court.

- (b) If the parties are able to reach an agreement at the conference, but are unable to have it written or have it signed and acknowledged as required by N.C.G.S. § 50-20(d) for property distribution agreements, then the parties shall summarize their understanding in written form and shall use it as a memorandum and guide to writing such agreements and orders as may be required to give legal effect to its terms. In that event, the mediator shall facilitate the writing of the summary memorandum and shall either:
 - (i) report to the court that the matter has been settled and include in the report the name of the person responsible for filing closing documents with the court; or, in the mediator's discretion,
 - (ii) declare a recess of the conference. If a recess is declared, the mediator may schedule another session of the conference if the mediator determines that it would assist the parties in finalizing a settlement.
- (2) If the agreement is reached at the conference, the parties shall file their consent judgment or voluntary dismissal with the court within 30 days or before expiration of the mediation deadline, whichever is longer.
- (3) If an agreement is reached prior to the conference or finalized while the conference is in recess, the parties shall notify the mediator and file the consent judgment or voluntary dismissal(s) with the court within 30 days or before the expiration of the mediation deadline, whichever is longer. The mediator shall report to the court that the matter has been settled and who reported the settlement.
- (4) No settlement agreement resolving issues reached at the proceeding conducted under this section or during its recesses shall be enforceable unless it has been reduced to writing, signed by the parties and acknowledged as required by N.C.G.S. § 50-20(d).

A. PAYMENT OF MEDIATOR'S FEE. The parties shall pay the mediator's fee as provided by Rule 7.

D. NO RECORDING. There shall be no stenographic, audio or video recording of the mediation process by any participant. This prohibition precludes recording either surreptitiously or with the agreement of the parties.

COMMENT TO RULE 4

Comment to Rule 4.B.

N.C.G.S. § 7A-38.4A(j) provides that no settlement shall be enforceable unless it has been reduced to writing and signed by the parties. When a settlement is reached during a mediated settlement conference, the mediator shall be sure its terms are reduced to writing and signed by the parties and their attorneys before ending the conference.

Cases in which agreement on all issues has been reached should be disposed of as expeditiously as possible. This rule is intended to assure that the mediator and the parties move the case toward disposition while honoring the private nature of the mediation process and the mediator's duty of confidentiality. If the parties wish to keep confidential the terms of their settlement, they may timely file with the court closing documents which do not contain confidential terms, *i.e.*, voluntary dismissal(s) or a consent judgment resolving all claims. Mediators will not be required by local rules to submit agreements to the court.