

## **FFS RULES – EFFECTIVE DATE JANUARY 1, 2012**

### **RULE 7. COMPENSATION OF THE MEDIATOR AND SANCTIONS**

- A. BY AGREEMENT.** When the mediator is selected by agreement of the parties, compensation shall be as agreed upon between the parties and the mediator. The terms of the parties' agreement with the mediator notwithstanding, Section E below shall apply to issues involving the compensation of the mediator. Sections D and F below shall apply unless the parties' agreement provides otherwise.
- B. BY COURT ORDER.** When the mediator is appointed by the court, the parties shall compensate the mediator for mediation services at the rate of \$150 per hour. The parties shall also pay to the mediator a one time, per case administrative fee of \$150, which accrues upon appointment.
- C. CHANGE OF APPOINTED MEDIATOR.** Pursuant to Rule 2.A, the parties may select a certified mediator or nominate a non-certified mediator to conduct their mediated settlement conference. Parties who fail to select a mediator and then desire a substitution after the court has appointed a mediator, shall obtain court approval for the substitution. The court may approve the substitution only upon proof of payment to the court's original appointee the \$150 one time, per case administrative fee and any other amount due and owing for mediation services pursuant to Rule 7.B and any postponement fee due and owing pursuant to Rule 7.F.
- D. PAYMENT OF COMPENSATION BY PARTIES.** Unless otherwise agreed to by the parties or ordered by the court, the mediator's fees shall be paid in equal shares by the named parties. Payment shall be due and payable upon completion of the conference.
- E. INABILITY TO PAY.** No party found by the court to be unable to pay a full share of a mediator's fee shall be required to pay a full share. Any party required to pay a share of a mediator fee pursuant to Rules 7.B and C may move the court to pay according to the court's determination of that party's ability to pay.

In ruling on such motions, the judge may consider the income and assets of the movant and the outcome of the action. The court shall enter an order granting or denying the party's motion. In so ordering, the court may require that one or more shares be paid out of the marital estate.

Any mediator conducting a settlement conference pursuant to these rules shall accept as payment in full of a party's share of the mediator's fee that portion paid by or on behalf of the party pursuant to an order of the court issued pursuant to this rule.

## **F. POSTPONEMENTS AND FEES.**

- (1) As used herein, the term "postponement" shall mean reschedule or not proceed with a settlement conference once a date for a session of the settlement conference has been scheduled by the mediator. After a settlement conference has been scheduled for a specific date, a party may not unilaterally postpone the conference.
- (2) A conference session may be postponed by the mediator for good cause only after notice by the movant to all parties of the reasons for the postponement and a finding of good cause by the mediator. Good cause shall mean that the reason for the postponement involves a situation over which the party seeking the postponement has no control, including but not limited to, a party or attorney's illness, a death in a party or attorney's family, a sudden and unexpected demand by a judge that a party or attorney for a party appear in court for a purpose not inconsistent with the Guidelines established by Rule 3.1(d) of the General Rules of Practice for the Superior and District Courts or inclement weather such that travel is prohibitive. Where good cause is found, a mediator shall not assess a postponement fee.
- (3) The settlement of a case prior to the scheduled date for mediation shall be good cause provided that the mediator was notified of the settlement immediately after it was reached and the mediator received notice of the settlement at least 14 calendar days prior to the date scheduled for mediation.
- (4) Without a finding of good cause, a mediator may also postpone a scheduled conference session with the consent of all parties. A fee of \$150 shall be paid to the mediator if the postponement is allowed, except that if the request for postponement is made within seven calendar days of the scheduled date for mediation, the fee shall be \$300. The postponement fee shall be paid by the party requesting the postponement unless otherwise agreed to between the parties. Postponement fees are in addition to the one time, per case administrative fee provided for in Rule 7.B.
- (5) If all parties select the certified mediator and they contract with the mediator as to compensation, the parties and the mediator may specify in their contract alternatives to the postponement fees otherwise required herein.

## **COMMENTS TO RULE 7**

### **Comment to Rule 7.B.**

Court-appointed mediators may not be compensated for travel time, mileage or any other out-of-pocket expenses associated with a court-ordered mediation.

**Comment to Rule 7.D.**

If a party is found by the court to have failed to attend a family financial settlement conference without good cause, then the court may require that party to pay the mediator's fee and related expenses.

**Comment to Rule 7.F.**

Non-essential requests for postponements work a hardship on parties and mediators and serve only to inject delay into a process and program designed to expedite litigation. As such, it is expected that mediators will assess a postponement fee in all instances where a request does not appear to be absolutely warranted. Moreover, mediators are encouraged not to agree to postponements in instances where, in their judgment, the mediation could be held as scheduled.