

MSC 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 senior resident superior court judge may order the use of the procedure requested under these rules or under local rules unless the court finds that the parties did not agree upon all of the relevant details of the procedure, (including items a-e in Rule 1.C.(2)); or that for good cause, the selected procedure is not appropriate for the case or the parties.
- 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).** Neutral evaluation in which a neutral offers an advisory evaluation of the case following summary presentations by each party;
 - (2) **Arbitration (Rule 12).** Non-binding arbitration, in which a neutral renders an advisory decision following summary presentations of the case by the parties and binding arbitration, in which a neutral renders a binding decision following presentations by the parties; and
 - (3) **Summary Trials (Jury or Non-Jury) (Rule 13).** Non-binding summary trials, in which a privately procured jury or presiding officer renders an advisory verdict following summary presentations by the parties and, in the case of a summary jury trial, a summary of the law presented by a presiding officer; and binding summary trials, in which a privately procured jury or presiding officer renders a binding verdict following summary presentations by the parties and, in the case of a summary jury trial, a summary of the law presented by a presiding officer.
- C. GENERAL RULES APPLICABLE TO OTHER SETTLEMENT PROCEDURES.**
- (1) **When Proceeding is Conducted.** Other settlement procedures ordered by the court pursuant to these rules shall be conducted no later than the date of completion set out in the court's original mediated settlement conference order unless extended by the senior resident superior court judge.

(2) **Authority and Duties of Neutrals.**

(a) **Authority of neutrals.**

- (i) **Control of proceeding.** The neutral evaluator, arbitrator or presiding officer shall at all times be in control of the proceeding and the procedures to be followed.
- (ii) **Scheduling the proceeding.** The neutral evaluator, arbitrator or presiding officer shall attempt to schedule the proceeding at a time that is convenient with the participants, attorneys and neutral(s). In the absence of agreement, such neutral shall select the date for the proceeding.

(b) **Duties of neutrals.**

- (i) The neutral evaluator, arbitrator or presiding officer 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 inadmissibility of conduct and statements as provided by N.C.G.S. § 7A-38.1(l) and Rule 10.C.(6) herein; and
 - (e) The duties and responsibilities of the neutral(s) and the participants.
- (ii) **Disclosure.** Each 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, arbitrator or presiding officer shall report the result of the proceeding to the court on a NCAOC form. The NCAOC may require the neutral to provide statistical data for evaluation of other settlement procedures on forms provided by it.

- (iv) **Scheduling and holding the proceeding.** It is the duty of the neutral evaluator, arbitrator or presiding officer 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 evaluator, arbitrator or presiding officer unless said time limit is changed by a written order of the senior resident superior court judge.
- (3) **Extensions of Time.** A party or a neutral may request the senior resident superior court judge to extend the deadline 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. If the court grants the motion for an extension, this order shall set a new deadline for the completion of the settlement procedure. Said order shall be delivered to all parties and the neutral by the person who sought the extension.
- (4) **Where Procedure is Conducted.** The neutral evaluator, arbitrator or presiding officer shall be responsible for reserving a place agreed to by the parties, setting a time, and making other arrangements for the proceeding and for giving timely notice to all attorneys and unrepresented parties in writing of the time and location of the proceeding.
- (5) **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 senior resident superior court judge.
- (6) **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 section, 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 subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding. No mediator, other neutral or neutral observer present at a settlement proceeding 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.

- (7) **No Record Made.** There shall be no record made of any proceedings under these Rules unless the parties have stipulated to binding arbitration or binding summary trial in which case any party after giving adequate notice to opposing parties may record the proceeding.
- (8) **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.
- (9) **Duties of the Parties.**

(a) **Attendance.** All persons required to attend a mediated settlement conference pursuant to Rule 4 shall attend any other settlement procedure which is non-binding in nature, authorized by these rules and ordered by the court except those persons to whom the parties agree and the senior resident superior court judge excuses. Those persons required to attend other settlement procedures which are binding in nature, authorized by these rules and ordered by the court shall be those persons to whom the parties agree. Notice of such agreement shall be given to the court and to the neutral through the filing of a motion to authorize the use of other settlement procedures within 21 days after entry of the order requiring a mediated settlement conference. The notice shall be on a NCAOC form.

(b) **Finalizing agreement.**

(i) If an agreement is reached on all issues at the neutral evaluation, arbitration or summary trial, the parties to the agreement shall reduce its terms to writing and sign it along with their counsel. A consent judgment or one or more voluntary dismissals shall be filed with the court by such persons as the parties shall designate within 14 days of the conclusion of the proceeding or before the expiration of the deadline for its completion, whichever is longer. The person(s) responsible for filing closing documents with the court shall also sign the report to the court. The parties shall give a copy of their signed agreement, consent judgment or voluntary dismissal(s) to the neutral evaluator, arbitrator or presiding officer and all parties at the proceeding.

(ii) If an agreement is reached upon all issues prior to the evaluation, arbitration or summary trial or while the proceeding is in recess, the parties shall reduce its terms to writing and sign it along with their counsel and shall file a consent judgment or voluntary dismissal(s) disposing of all issues with the court within 14 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 senior resident judge 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).

(10) **Selection of Neutrals in Other Settlement Procedures.** The parties may select any individual to serve as a neutral in any settlement procedure authorized by these rules. For arbitration, the parties may select either a single arbitrator or a panel of arbitrators. 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 within 21 days after entry of the order requiring a mediated settlement conference.

The notice shall be on a NCAOC form. 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.

(11) **Disqualification.** Any party may move a resident or presiding superior court judge 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 if 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 the Neutral.** A neutral's compensation shall be paid in an amount agreed to among the parties and the neutral. Time spent reviewing materials in preparing for the neutral evaluation, conducting the proceeding and making and reporting the award shall be compensable time.

Unless otherwise ordered by the court or agreed to by the parties, the neutral's fees shall be paid in equal shares by the parties. For purposes of this section, multiple parties shall be considered one party when they are represented by the same counsel. The presiding officer and jurors in a summary jury trial are neutrals within the meaning of these Rules and shall be compensated by the parties.

(13) Sanctions for Failure to Attend Other Settlement Procedure or Pay Neutral's Fee. Any person required to attend a settlement procedure or to pay a neutral's fee in compliance with N.C.G.S. § 7A-38.1 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 a resident or presiding superior court judge. 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 seeking sanctions against a person or a resident or presiding judge upon his/her own motion, 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.