

**TWELFTH JUDICIAL DISTRICT
DISTRICT COURT
FAMILY COURT DIVISION**

**RULES IMPLEMENTING SETTLEMENT PROCEDURES IN
EQUITABLE DISTRIBUTION AND OTHER
FAMILY FINANCIAL CASES**

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Settlement Procedures Rules

The Twelfth Judicial District having been selected as a site for the implementation of Family Court and therefore being required to implement Settlement Procedures in Family Financial Cases, including Equitable Distribution actions, the Court hereby enacts these local rules pursuant to the authority set forth in the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases and does hereby incorporate said Supreme Court Rules in their entirety.

RULE 1. INITIATING SETTLEMENT PROCEDURES

1.1 These Rules are promulgated to implement a system of settlement events, which are designed to focus the parties' attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time before or after those ordered by the Court pursuant to these Rules, including binding or non-binding arbitration as permitted by law.

1.2 In furtherance of this purpose, counsel, upon being retained to represent any party in an equitable distribution, child support, alimony, or post-separation support action, shall advise his or her client regarding the settlement procedures approved by these Rules and, at or prior to the scheduling conference mandated by G.S. 50-21(d) , shall attempt to reach agreement with opposing counsel on the appropriate settlement procedure for the action.

1.3 Ordering Settlement Procedures

(A) Equitable Distribution Scheduling Conference. At the scheduling conference mandated by G.S. 50-21(d) in an equitable distribution action, the Court shall include in its scheduling order a requirement that the parties and their counsel attend a mediated settlement conference or, if the parties agree, other settlement procedure conducted pursuant to these rules, unless excused by the Court pursuant to these rules.

(B) Scope of Settlement Proceedings. All other financial issues existing between the parties when the equitable distribution settlement proceeding is ordered, or at any time thereafter, may be discussed, negotiated or decided at the proceeding

(C) Authorizing Settlement Procedures Other Than Mediated Settlement Conference. The parties and their attorneys are in the best position to know which settlement procedure is appropriate for their case. Therefore, the Court shall order the use of a settlement procedure authorized herein if the parties have agreed upon the procedure to be used, the neutral to be employed and the compensation of the neutral. If the parties have not agreed on all three items,

then the Court shall order the parties and their counsel to attend a mediated settlement conference conducted pursuant to these Rules.

The motion for an order to use a settlement procedure other than a mediated settlement conference shall be submitted on an AOC form entitled *Motion For Order To Use Settlement Procedure Other Than Mediated Settlement Conference Or Judicial Settlement Conference In Family Financial Cases* [AOC-CV-826], or in letter or motion form, at the scheduling conference and shall state:

- (1) the settlement procedure chosen by the parties;
- (2) the name, address and telephone number of the neutral selected by the parties;
- (3) the rate of compensation of the neutral; and
- (4) that all parties consent to the motion.

(D) **Content of Order.** The Court's order shall (1) require the mediated settlement conference or other settlement proceeding be held in the case; (2) establish a deadline for the completion of the conference or proceeding; and (3) state that the parties shall be required to pay the neutral's fee at the conclusion of the settlement conference or proceeding unless otherwise ordered by the Court. Where the settlement proceeding ordered is a judicial settlement conference, the parties shall not be required to pay for the neutral.

(E) **Court-Ordered Settlement Procedures in Other Family Financial Cases.** Any party to an action involving family financial issues not previously ordered to a mediated settlement conference may move the Court to order the parties to participate in a settlement procedure. Such motion shall be made in writing, state the reasons why the order should be allowed and be served on the non-moving party and filed with the Family Court Administrator. Any objection to the motion or any request for hearing shall be filed in writing with the Family Court Administrator within 10 days after the date of the service of the motion. Thereafter, the Judge shall rule upon the motion and the Family Court Administrator will notify the counsel/unrepresented parties of the ruling. If the Court orders a settlement proceeding, then the proceeding shall be a mediated settlement conference conducted pursuant to these Rules. Other settlement procedures may be ordered if the circumstances outlined in subsection(C) above have been met.

(F) **Motion to Dispense With Settlement Procedures.** A party may move the Court to dispense with the mediated settlement conference or other settlement procedure. Such motion shall be in writing and shall state the reasons the relief is sought and filed with the Family Court Administrator. For good cause shown, the Court may grant the motion. Such good cause may include, but not be limited to, the fact that the parties have submitted the action to arbitration or that one of the parties has alleged domestic violence. The Court may also dispense with the mediated settlement conference for good cause upon its own motion.

RULE 2. SELECTION OF MEDIATOR

2.1 The parties may select a mediator certified pursuant to these Rules by agreement by presenting to the Court a Designation of Mediator by Agreement at the scheduling conference. Such designation shall: state the name, address and telephone number of the mediator selected;

state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.

2.2 In the event the parties wish to select a mediator who is not certified pursuant to these Rules, the parties may nominate said person by presenting to the Court a Nomination of Non-Certified Mediator at the scheduling conference. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience, or other qualifications of the mediator; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation, if any. The Court shall approve said nomination if, in the Court's opinion, the nominee is qualified to serve as mediator and the parties and the nominee have agreed upon the rate of compensation.

2.3 Designations of mediators and nominations of mediators shall be made on an AOC form entitled Designation of Mediator [AOC-CV-825] or in letter or motion form containing the necessary substantive information. A copy of each such form submitted to the Court and a copy of the Court's order requiring a mediated settlement conference, shall be delivered to the mediator by the parties.

2.4 To assist the parties in the selection of a mediator by agreement, the Family Court Administrator shall prepare and keep current a central directory of information on all mediators certified pursuant to these Rules who wish to mediate in Cumberland County. Such information shall be collected on loose leaf forms provided by the Dispute Resolution Commission and be kept in one or more notebooks made available for inspection by attorneys and parties in the Office of the Clerk of Court for Cumberland County at the attorney mailboxes.

RULE 3. APPOINTMENT OF CERTIFIED MEDIATOR BY THE COURT

3.1 If the parties cannot agree upon the selection of a mediator, they shall so notify the Court and request that the Court appoint a mediator. The motion shall be at the scheduling conference and shall state that the attorneys for the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The motion shall be on an AOC form entitled *Designation of Mediator* [AOC-CV-825], or in letter or motion form containing the necessary substantive information.

3.2 Upon receipt of a motion to appoint a mediator, or in the event the parties have not filed a designation or nomination of mediator, the Court shall appoint a mediator certified pursuant to these Rules under a procedure established by the Chief District Court Judge.

3.3 Any party may move a Court of the district where the action is pending for an order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to Rule 2 above. Nothing in this provision shall preclude mediators from disqualifying themselves.

RULE 4. THE MEDIATED SETTLEMENT CONFERENCE

4.1 The mediated settlement conference shall be held in any location agreeable to the parties and the mediator. If the parties cannot agree to a location, the mediator 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.

4.2 The conference should be held within 120 days of the mediation order pursuant to Rule 1.3(d) above.

4.3 A party, or the mediator, may move the Court to extend the deadline for completion of the conference. Such motion shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the motion, said party shall promptly communicate its objection to the Court. The Court may grant the request by entering a written order setting a new deadline for completion of the conference, which date may be set at any time prior to trial. **Said order shall be delivered to all parties and the mediator by the person who sought the extension.**

4.4 The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set during the conference, no further notification is required for persons present at the conference.

4.5 The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.

RULE 5. DUTIES OF PARTIES, ATTORNEYS AND OTHER PARTICIPANTS IN MEDIATED SETTLEMENT CONFERENCES

5.1 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.

5.2 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.

5.3 The essential terms of the parties' agreement shall be reduced to writing as a summary memorandum at the conclusion of the conference unless the parties have executed final documents. 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 the its terms. Within

thirty (30) days of reaching agreement at the conference, 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. In the event the parties fail to agree on the wording or terms of a final agreement or court order, the mediator may schedule another session if the mediator determines that it would assist the parties.

5.4 The parties shall pay the mediator's fee as provided by Rule 8 below.

RULE 6. SANCTIONS FOR FAILURE TO PARTICIPATE IN AND/OR ATTEND MEDIATED SETTLEMENT CONFERENCES

6.1 If any person required to participate in and/or attend a mediated settlement conference fails to do so without good cause, the Court may impose upon that person an appropriate monetary sanction including, but not limited to, the payment of attorneys fees, mediator fees, expenses and loss of earnings incurred by persons attending the conference.

6.2 A party to the action seeking sanctions, or the Court on its 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 who sanctions are being sought and filed with the Family Court Administrator. 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.

RULE 7. AUTHORITY AND DUTIES OF MEDIATORS

7.1 The mediator shall at all times be in control of the conference and the procedures to be followed. However, the mediator's conduct shall be governed by standards of conduct promulgated by the Supreme Court upon the recommendation of the Dispute Resolution Commission, which shall contain a provision prohibiting mediators from prolonging a conference unduly.

7.2 The mediator may communicate privately with any participant during the conference. However, there shall be no *ex parte* communication before or outside the conference between the mediator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this rule prevents the mediator from engaging in *ex parte* communications, with the consent of the parties, for the purpose of assisting settlement negotiations.

7.3 The mediator shall define and describe the following at the beginning of the conference:

- (A) The process of mediation;
- (B) The differences between mediation and other forms of conflict resolution;
- (C) The costs of the mediated settlement conference;
- (D) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement;

- (E) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
- (F) Whether and under what conditions communications with the mediator will be held in confidence during the conference; [*The inadmissibility of conduct and statements as provided by G.S. 7A-38.1(1).*]
- (G) The duties and responsibilities of the mediator and the participants; and
- (H) The fact that any agreement reached will be reached by mutual consent.

7.4 The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.

7.5 It is the duty of the mediator to determine in a timely manner that an impasse exists and that the conference should end. To that end, the mediator shall inquire of and consider the desires of the parties to cease or continue the conference.

7.6 The mediator shall report to the Family Court Administrator using an AOC form entitled *Report Of Mediator Or Other Neutral In Family Financial Cases [AOC-CV-827]* within 10 days of the conference, whether or not the parties reached an agreement. If the case is settled or otherwise disposed of prior to the conference, the mediator shall file the report indicating the disposition of the case. If an agreement was reached at the conference, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file such consent judgment or dismissals. If partial agreements are reached at the conference, the report shall state what issues remain for trial. The mediator's report shall inform the Court of the absence without permission of any party or attorney from the mediated settlement conference.

7.7 The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the Court's order. The mediator shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the mediator shall select a date and time for the conference. The mediator shall strictly observe deadlines for completion of the conference unless changed by written order of the Court.

RULE 8. COMPENSATION OF THE MEDIATOR

8.1 When the mediator is selected by agreement of the parties, compensation shall be as agreed upon between the parties and the mediator.

8.2 When the Court appoints the mediator, the parties shall compensate the mediator for mediation services at the hourly rate and a one time, per case administrative fee as set by statute in Rule 7(B) of the North Carolina Rules of Court.

8.3 Unless otherwise agreed to by the parties or ordered by the Court, the parties shall pay the mediator's fee in equal shares. Payment shall be due and payable upon completion of the conference.

8.4 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 may move the Court to pay according to the Court's determination of that party's ability to pay. *The Petition and Order For Relief From Obligation To Pay All Or Part Of Mediator's Fee In Family Financial Cases* shall be on AOC form AOC-CV-828. 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.

RULE 9. OTHER SETTLEMENT PROCEDURES

9.1 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 the procedure requested unless the Court finds that the parties did not agree upon the procedure to be utilized, the neutral to conduct it and the neutral's compensation; or that the procedure selected is not appropriate for the case or the parties.

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

- (A) Neutral Evaluation (set forth in Rule 10 below), in which a neutral offers an advisory evaluation of the case following summary presentations by each party.
- (B) Judicial Settlement Conference (set forth in Rule 11 below), in which a District Court Judge assists the parties in reaching their own settlement. This option must be approved by the Chief District Court Judge and generally will only be allowed when at least one litigant is *pro se*.
- (C) Binding Arbitration pursuant to North Carolina General Statute 50-41 et. seq.

RULE 10. RULES FOR NEUTRAL EVALUATION

10.1 The neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, providing a candid assessment of the merits of the case, settlement value, and a dollar value or range of potential awards if the case proceeds to trial. The evaluator is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.

10.2 The neutral evaluation conference should be held within 120 days of the mediation order pursuant to Rule 1.3 above.

10.3 No later than twenty (20) days prior to the date established for the neutral evaluation conference to begin, each party shall furnish the evaluator with written information about the case, and shall at the same time certify to the evaluator that they served a copy of such summary on all other parties to the case. The information provided to the evaluator and the other parties hereunder shall be a summary of the significant facts and issues in the party's case, and shall have attached to it copies of any documents supporting the parties' summary. Information provided to the evaluator and to the other parties pursuant to this paragraph shall not be filed with the Court.

10.4 No later than ten (10) days prior to the date established for the neutral evaluation conference to begin, any party may, but is not required to, send additional written information to the evaluator responding to the submission of an opposing party. The response furnished to the evaluator shall be served on all other parties and the party sending such response shall certify such service to the evaluator, but such response shall not be filed with the Court.

10.5 Prior to a neutral evaluation conference, the evaluator, if he or she deems it necessary, may request additional written information from any party. At the conference, the evaluator may address questions to the parties and give them an opportunity to complete their summaries with a brief oral statement.

10.6 At the beginning of the conference the evaluator shall define and describe the following points to the parties:

- (A) The facts that the neutral evaluation conference is not a trial, the evaluator is not a judge, the evaluator's opinions are not binding on any party, and the parties retain their right to trial if they do not reach a settlement.
- (B) The fact that any settlement reached will be only by mutual consent of the parties.

10.7 In addition to the written report to the Court required under these rules, at the conclusion of the neutral evaluation conference the evaluator shall issue an oral report to the parties advising them of his or her opinions of the case. Such opinion shall include a candid assessment of the

merits of the case, estimated settlement value, and the strengths and weaknesses of each party's claims if the case proceeds to trial. The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefor. The evaluator shall not reduce his or her oral report to writing and shall not inform the Court thereof.

10.8 Within ten (10) days after the completion of the neutral evaluation conference, the evaluator shall file a written report with the Court using an AOC form entitled *Report Of Mediator Or Other Neutral In Family Financial Cases* [AOC-CV-827], stating when and where the conference was held, the names of those persons who attended the conference, whether or not an agreement was reached by the parties, and the name of the person designated to file judgments or dismissals concluding the action.

10.9 If all parties at the neutral evaluation conference request and agree, the evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement during such discussions, however, the evaluator shall complete the neutral evaluation conference and make his or her written report to the Court as if such settlement discussions had not occurred. If the parties reach agreement at the conference, they shall reduce their agreement to writing as required by Rule 5 above.

RULE 11. JUDICIAL SETTLEMENT CONFERENCE

11.1 A judicial settlement conference shall be conducted by a District Court Judge who shall be selected by the Chief District Court Judge.

11.2 The form and manner of conducting the conference shall be in the discretion of the settlement judge. The settlement judge may not impose a settlement on the parties but will assist the parties in reaching a resolution of all claims.

11.3 Judicial settlement conferences shall be conducted in private. No stenographic or other record may be made of the conference. Persons other than the parties and their counsel may attend only with the consent of all parties. The settlement judge will not communicate with anyone the communications made during the conference, except that the judge may report that a settlement was reached and, with the parties' consent, the terms of that settlement.

RULE 12. TIME LIMITS

12.1 Any time limit provided for by these rules may be waived or extended for good cause shown. Time shall be counted pursuant to the Rules of Civil Procedure.

12.2 The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Court.