

**RULES FOR
ALTERNATIVE DISPUTE RESOLUTION (ADR)
IN EQUITABLE DISTRIBUTION
AND OTHER DISTRICT FINANCIAL CASES
IN THE 24TH JUDICIAL DISTRICT**

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**RULES FOR
ALTERNATIVE DISPUTE RESOLUTION (ADR)
IN EQUITABLE DISTRIBUTION
AND OTHER DISTRICT FINANCIAL CASES
IN THE 24TH JUDICIAL DISTRICT**

RULE 1. THE POLICY OF THE DISTRICT COURT OF THE 24TH JUDICIAL DISTRICT CONCERNING THE USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

The District Court Judges of the 24th Judicial District and the 24th Judicial District Bar recognize that alternatives to litigation often provide better means of resolving disputes and, accordingly, support a program of appropriate dispute resolution in all equitable distribution and other District financial cases filed in the 24th Judicial District. These rules implement a menu of ADR techniques available for use in equitable distribution and other District financial cases, with the goal of expediting resolution and reducing costs to litigants.

These Rules amend and replace the existing "Rules for Alternative Dispute Resolution in Equitable Distribution Proceedings in the 24th Judicial District" on their effective date of November 1, 2002.

RULE 2. THE ADR METHODS ADOPTED BY THESE RULES

- The following techniques for ADR are available in the 24th Judicial District:
- Mediated Settlement Conference: an independent mediator assists the parties in reaching their own settlement (available in equitable distribution and other District financial cases);
- Early Neutral Evaluation: an evaluator offers an advisory evaluation of the case in its early stages (available only in equitable distribution cases);
- Arbitration: an arbitrator makes a decision following a presentation by each side (available only in equitable distribution cases);
- Judicial Settlement Conference: a District Court Judge, other than the Assigned Judge, assists the parties in reaching their own settlement (available in equitable distribution and other District financial cases);
- Some other court-approved ADR procedure upon which the parties may agree.

RULE 3. DUTY OF COUNSEL TO CONSULT WITH CLIENTS AND OPPOSING COUNSEL CONCERNING USE OF AN ADR PROCEDURE

- a. Upon being retained to represent any party in an equitable distribution or other District financial action, counsel shall advise his or her client regarding the ADR procedures approved by these Rules.
- b. In equitable distribution cases, at or prior to the Initial Pre-Trial Conference (IPTC), counsel shall consult with his or her client and other counsel about the use of ADR or, alternatively, an expedited trial, and shall attempt to reach agreement on the use of an ADR procedure or an expedited trial.

RULE 4. ADR IN EQUITABLE DISTRIBUTION CASES

A. SELECTION OF ADR OR EXPEDITED TRIAL

At the Initial Pre-Trial Conference (IPTC), the Court shall enter an Order for ADR or for an expedited trial and the case shall proceed as follows:

- (1) If the parties agree to an expedited trial, the case shall proceed without ADR.
- (2) If the parties agree to a Mediated Settlement Conference, the case shall proceed in accordance with these Rules, including the Rules for Mediated Settlement Conferences as set forth in Exhibit A appended hereto.
- (3) If the parties agree to an Early Neutral Evaluation or a Judicial Settlement Conference, and to the neutral for the proceeding, the case shall proceed under the selected process in accordance with these Rules, including the rules for the applicable procedure as set forth in Exhibits B or C appended hereto.
- (4) If the parties agree to use arbitration as an ADR procedure, same shall occur in accordance with the District Law Arbitration Act (N.C.G.S. §50-41 et seq.) or such other procedures as is agreed upon by the parties.
- (5) If some other ADR procedure is requested by the parties, the case shall proceed pursuant to rules submitted by the parties and approved by the Court.
- (6) In the event the parties cannot reach agreement on an ADR procedure, and, in the case of Early Neutral Evaluation or Judicial Settlement Conference, cannot agree on the neutral or settlement judge, the Assigned District Court Judge, or Chief Judge will order Mediated Settlement Conference as the designated ADR procedure and the mediator shall be appointed by the Court from a list of approved mediators maintained by the District Court Administrator in the Chief District Court Judge's Office.

B. GENERAL RULES APPLICABLE TO ALL EQUITABLE DISTRIBUTION CASES

- (1) Time for Proceeding. The Order for ADR shall state that the ADR procedure shall be completed prior to the Final Pre-Trial Conference (FPTC). The neutral shall file with the Clerk of Court and provide to the Assigned District Court Judge a notice of the outcome of the proceeding within seven (7) business days after the proceeding. The neutral's Report for Mediated Settlement Conferences should be on State Form AOC-CV-827.
- (2) Place of Proceeding. Unless all parties and the neutral otherwise agree, the ADR proceeding will be held in the courthouse or other public or community building in the District. The neutral shall be responsible for reserving a place, 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.
- (3) Pre-Proceeding Submission. Pre-proceeding submissions shall be governed by the specific rules for the particular ADR proceeding or as requested by the neutral.
- (4) No Delay of Other Proceedings. The ADR proceeding called for in these Rules, unlike custody mediation, shall not cause the 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.
- (5) Inadmissibility of Negotiations. All conduct or communications made during an ADR proceeding are presumed to be made in compromise negotiations and shall be governed by Rule 408 of the North Carolina Rules of Evidence.
- (6) No Record Made. There shall be no record made of any ADR proceedings under these Rules, unless the parties have agreed to binding arbitration, in which case any party may request that a record be made.
- (7) Ex Parte Communication Prohibited. There shall be no ex parte communication outside the ADR proceeding between the neutral and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. The neutral may, however, engage in ex parte communications, with the consent of the parties, for the purpose of assisting settlement negotiations.
- (8) Attendance. Counsel and his or her client shall attend, unless the client elects to attend without counsel, in which event counsel shall advise opposing counsel and the neutral in writing that the client will appear pro se.
- (9) Right to Trial. ADR proceedings under these Rules shall not impair the right of the litigants to demand a trial.
- (10) Immunity of the Neutral. A neutral acting pursuant to these Rules shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice.
- (11) Conclusion of ADR Proceeding. At the end of the final ADR session, if agreement has been reached, the neutral shall draft a written document (the "Summary Document"), which the parties shall sign, setting forth all agreements reached by

the parties and indicating the intended legal effect of the document, including the extent to which it is binding upon the parties.

RULE 5. ADR IN OTHER DISTRICT FINANCIAL CASES

A. ORDER FOR MEDIATED SETTLEMENT CONFERENCES

- (1) Order by the Chief District Court Judge. The Chief District Court Judge may, by written standing order, require all parties to attend a pre-trial mediated settlement conference or such other ADR procedure as may be permitted under these rules in Family Court actions involving the following class of cases: (a) unless joined with an equitable distribution claim, alimony claims; (b) prenuptial agreements; (c) post nuptial agreements; (d) separation agreements; (e) retroactive child support; and (f) child support cases which exceed the current guideline maximum with regard to income or number of children.
- (2) Timing of the Order. The District Court Administrator shall issue the standing order and a form notice (CCF-68) setting the deadline for completion of the ADR procedure to the filing party at the time of the filing of the complaint. The filing party shall serve a copy of the standing order and notice on the opposing party (ies) at the time of service of the complaint
- (3) Content of Order. The court's order and accompanying notice shall (a) require that either a Mediated Settlement Conference or a Judicial Settlement Conference be held in the case; (b) establish a deadline for the completion of the conference; (c) state clearly that the parties shall select their own mediator or a District Court Judge as provided hereinafter; and (d) state that the parties shall be required to pay the mediator's fee at the conclusion of the conference unless otherwise ordered by the court.
- (4) Motion to Dispense with Mediated Settlement Conference or Judicial Settlement Conference. A party may move the Assigned District Court Judge, within 60 days after the Court's order, to dispense with the conference. Such motion shall state the reasons the relief is sought. For good cause shown, the assigned District Court Judge may grant the motion.

B. SELECTION OF MEDIATOR OR DISTRICT COURT JUDGE

- (1) Selection of Mediator or District Court Judge by Agreement of Parties. The parties may select a mediator or District Court Judge by agreement within 60 days of the court's order. The plaintiff's attorney shall file with the court a Notice of Selection of Mediator or District Court Judge by Agreement (Form AOC-CV 825 OR 826) within 60 days of the court's order. Such notice shall state the name of the mediator or District Court Judge selected, address and telephone number of the mediator or District Court Judge selected, and state that the parties have agreed upon the mediator's rate of compensation.

- (2) Mediator Information Directory. To assist the parties in the selection of a mediator by agreement, the District Court Administrator shall prepare and keep current a central directory of information listing all mediators who wish to mediate District Court cases.
- (3) Appointment of Neutral. If the parties agree to a mediated settlement conference but do not agree upon the person to serve as the mediator, then the assigned Judge shall appoint a mediator from the list of approved mediators maintained by the District Court Administrator. If the parties do not agree to mediate, or if the parties select a judicial settlement conference but cannot agree upon the selection of a District Court Judge to serve as mediator, then the District Court Administrator shall appoint a District Court Judge (other than the assigned Judge) to conduct the judicial settlement conference.

C. THE CONFERENCE

- (1) Where Conference is to be Held. The mediator or selected District Court Judge shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend. The mediator or judge shall make a good faith effort to schedule the conference at a time that is convenient for the participants, attorneys and the neutral. In the absence of agreement the neutral shall select the date for the conference.
- (2) When Conference is to be Held. As a guiding principle, the conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date.

The court's standing order and accompanying notice shall state a date of completion for the conference which shall be not less than 120 days (unless all parties agree to an earlier date of completion) nor more than 180 days after issuance of the court's order.

- (3) Request to Extend Date of Completion. A party, the mediator, or the selected District Court Judge may request that the Assigned District Court Judge extend the deadline for completion of the conference. Such request 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 objects to the request, said party shall promptly communicate its objection to the office of the Chief District Court Judge.

The Assigned District Court Judge may grant the request by entering a written order on Form CCF-70 setting a new date for the completion of the conference, which date may be set at any time prior to trial. The person who sought the extension shall deliver said order to all parties and to the mediator or selected District Court Judge.

- (4) Recesses. The mediator or the selected District Court Judge may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

- (5) The Mediated Settlement Conference or Judicial Settlement Conference is not to delay other proceedings. The 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 Assigned District Court Judge.

D. DUTIES OF PARTIES, ATTORNEYS AND OTHER PARTICIPANTS

- (1) Attendance. The following persons shall attend a mediated settlement conference or judicial settlement conference:
 - (a) The Parties; and
 - (b) At least one counsel of record for each party or other participant whose counsel has appeared in the action.
- (2) Any party or person required to attend a Mediated Settlement Conference or Judicial Settlement Conference shall physically attend until an agreement is reduced to writing and signed or an impasse has been declared. Any such party or person may have the attendance requirement excused or modified, including that party's or person's participation without physical attendance, as follows:
 - (a) By agreement of all parties and persons required to attend and the mediator or selected District Court Judge; or
 - (b) By order of the Assigned District Court Judge, upon motion of a party and notice to all parties and persons required to attend and the mediator or selected District Court Judge.
- (3) Finalizing Agreement. At the end of the final ADR session, if agreement has been reached, the neutral shall draft a written document (the "Summary Document"), which the parties shall sign, setting forth all agreements reached by the parties and indicating the intended legal effect of the document, including the extent to which it is binding upon the parties.

E. DUTIES OF MEDIATORS

- (1) Duties of Mediator. In addition to the duties set out in the Rules for Mediated Settlement Conferences attached hereto as Exhibit A, the mediator also has the following duties:
 - (a) Reporting Results of Conference. The mediator shall report to the court in writing whether or not the parties reached an agreement. If an agreement was reached, 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. The mediator's report shall inform the court of the absence of any party or attorney, known to the mediator to have been absent without permission from the mediated settlement conference.

- (b) Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and conduct it prior to the conference completion deadline set out in the court's standing order and notice. The mediator shall strictly observe deadlines for completion of the conference unless said time limit is changed by written order of the Assigned District Court Judge.

RULE 6. NEUTRALS

- a. Independent Selection. By agreement of the parties, any individual may be selected to serve as a neutral.
- b. Approved Neutrals. Neutrals who meet the requirements specified below shall serve at the pleasure of the Chief District Court Judge.
 - (1) Mediators. A mediator shall have those qualifications required by Rules 8 and 9 of the Rules Governing Mediated Settlement Conferences as implemented pursuant to N.C. Gen. Stat. § 7A-38.
 - (2) Evaluators. An evaluator shall:
 - (a) Be a member in good standing of the North Carolina State Bar and have at least five years experience as a judge, practicing attorney, law professor, arbitrator or mediator, or have equivalent experience;
 - (b) Be of good moral character and adhere to all ethical standards adopted either before or after the adoption of these Rules; and
 - (c) Be a District law practitioner.
 - (3) Arbitrators. An arbitrator shall:
 - (a) Be a member in good standing of the North Carolina State Bar and have at least five years experience as a judge, practicing attorney, law professor, arbitrator or mediator, or have equivalent experience; and
 - (b) Have completed some form of arbitration training program such as, but not limited to, arbitration training certified by the Administrative Office of the Courts or provided by the American Arbitration Association, or have been approved as an arbitrator in a program providing arbitration services such as the American Arbitration Association or the Private Adjudication Center of Duke University; and
 - (c) Be of good moral character and adhere to all ethical standards adopted either before or after the adoption of these Rules.
 - (d) Be a District law practitioner.
- c. Lists of Neutrals. The District Court Administrator shall maintain lists of neutrals, together with a brief biography containing the experience and qualifications of each neutral. Any neutral meeting the requirements set forth in subparagraph (b) above shall be on the District Court Administrator's List.

- d. Settlement Judges. A settlement judge shall be a District Court Judge, other than the Assigned Judge, who has agreed to act as a settlement judge.
- e. Disqualification. Any party may move the Assigned District Court Judge for an order disqualifying the neutral and, for good cause, such order shall be entered and the Court shall assign a new neutral.

RULE 7. COMPENSATION OF THE NEUTRAL

- a. By Agreement. When the parties stipulate to the selection of a particular neutral, compensation shall be agreed to among the parties and the neutral.
- b. By the Court. When the mediator is appointed by the Court, the mediator shall be compensated by the parties at the same hourly rate as that set for mandatory Mediated Settlement Conferences under the Rules Governing Mediated Settlement Conferences in Superior Court Civil Actions pursuant to N.C.G.S. § 78A-38 for all time expended by the mediator in connection with the mediated settlement conference, plus reasonable out-of-pocket expenditures. These rules are included in the Rules Volume of the N.C. General Statutes.
- c. Payment of Compensation by Parties. Unless otherwise agreed to by the parties, the parties shall pay costs of the ADR proceedings in equal shares. Payment shall be made directly to the neutral upon completion of the ADR proceeding.
- d. Indigent Cases. No party found to be indigent by the Assigned Judge for the purposes of these Rules shall be required to pay a court-appointed Mediator. If a party has not previously been found to be indigent, that party may apply to the Assigned Judge for a finding of indigence and ask to be relieved of the obligation to pay his or her share of the compensation due. Such a motion shall be heard no later than 10 days before the ADR proceeding. If a party is found to be indigent, the mediator's fee shall be reduced by the indigent's proportionate share rather than requiring the other parties to make up the difference.

RULE 8. SANCTIONS FOR FAILURE TO ATTEND

If any person required to attend an ADR proceeding fails to attend without good cause, the Court may impose upon that person any appropriate money sanction, including, but not limited to, the payment of fines, attorneys fees, neutral fees, expenses, and loss of earnings incurred by persons attending the conference.

A party to the action, or the Court on its own motion, seeking sanctions against a party or an 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.

Exhibit "A"

RULES FOR MEDIATED SETTLEMENT CONFERENCES

RULE 1. AUTHORITY OF MEDIATOR

- a. Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.
- b. Private Consultation. The mediator may meet and consult privately with any party or parties or their counsel during the conference.

RULE 2. DUTIES OF MEDIATOR

- a. Pre-Proceeding Statements. The mediator shall define and describe the following to the parties at the beginning of the conference:
 - (1) The process of mediation;
 - (2) The differences between mediation and other forms of conflict resolution;
 - (3) The costs of the mediated settlement conference;
 - (4) The facts that the mediated settlement conference is not a hearing, the mediator is not a judge, and the parties retain their right to a hearing if they do not reach settlement;
 - (5) The circumstances under which the mediator may meet alone with either of the parties or with any other person;
 - (6) Whether and under what conditions communications with the mediator will be held in confidence during the conferences;
 - (7) The inadmissibility of conduct and statements as provided by these Rules;
 - (8) The duties and responsibilities of the mediator and the parties; and
 - (9) The fact that any agreement reached will be reached by mutual consent of the parties.
- b. Mediator Disclosures. The mediator has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice or partiality.
- c. Declaring Impasse. It is the duty of the mediator to timely determine when mediation is not viable, that an impasse exists, or that mediation should end.

Exhibit "B"

RULES FOR EARLY NEUTRAL EVALUATION

RULE 1. THE EARLY NEUTRAL EVALUATION CONFERENCE (ENE)

- a. Nature of ENE. ENE shall consist of an informal, abbreviated presentation, in the early stages of the case, of case facts and issues by all parties to the Evaluator selected for ENE who will be responsible for evaluating the strengths and weaknesses of the case, providing a candid assessment of liability, settlement value, and a dollar value or range of potential awards if the case proceeds to trial. The Evaluator will also be responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.
- b. Pre-Conference Submissions. No later than twenty (20) days prior to the date established for the ENE conference to begin, the parties shall furnish the Evaluator with written information about their 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 to be provided to the Evaluator and to the other parties hereunder shall be in the form of a summary of the significant facts and issues in the party's case, shall not be more than five (5) pages in length, and shall have attached to it copies of any documents upon which the party relies.
- c. Replies and Statements of Compliance. No later than ten (10) days prior to the date established for the ENE Conference to begin, any party may, but is not required to, send additional written information not exceeding three (3) pages in length to the Evaluator, responding to the submission of an opposing party. The response shall be served on all other parties and the party sending such response shall certify such service to the Evaluator.
- d. Conference Procedure. Prior to or at the ENE conference, the Evaluator may, if he or she deems it necessary, 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.
- e. Modification of Procedure. Subject to approval of the Evaluator, the parties may agree to modify the procedures required by the Rules for Early neutral Evaluation.

RULE 2. EVALUATOR'S DUTIES

- a. Evaluator's Opening Statement. At the beginning of the conference the Evaluator shall define and describe the following points to the parties:
 - (1) The process of ENE;
 - (2) The differences between ENE and other forms of dispute resolution;
 - (3) The anticipated costs of the ENE proceeding;
 - (4) The facts that the ENE 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;

- (5) The inadmissibility of conduct and statements as provided by Rule 408 of the North Carolina Rules of Evidence and by these Rules concerning ENE;
 - (6) The duties and responsibilities of the Evaluator and of the parties and other persons attending the conference; and
 - (7) The fact that any settlement reached will be only by mutual consent of the parties.
- b. Additional Report by Evaluator. In addition to the report to the court required under the ADR Rules, at the conclusion of the ENE 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 liability, 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 therefore.
- c. Evaluator Disclosures. The evaluator has a duty to be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice or partiality.

Exhibit "C"

RULES FOR JUDICIAL SETTLEMENT CONFERENCES

- a. A settlement conference shall be conducted by a District Court Judge, other than the Assigned Judge.
- b. Settlement conferences will be scheduled for two hours at a time certain. Conferences exceeding two hours may be scheduled in the discretion of the settlement judge at the request of counsel for all parties. At the time of the conference, attorneys and the parties must be present.
- c. Nothing in these rules shall be deemed to prevent more than one settlement conference at the request of the parties or in the discretion of the settlement judge.
- d. The form and manner of conducting the settlement conference shall be in the discretion of the settlement judge. The settlement judge may not impose a settlement on the parties, but will instead seek to assist the parties to reach a resolution of all claims. Settlement conference proceedings will remain confidential, and in the event a settlement is not achieved, will not be communicated to the Assigned District Court Judge. There will be no stenographic or other record made of the settlement conference. Settlement conferences will be conducted in private, and persons other than counsel and the parties may attend the settlement conference only with the consent of all parties and the settlement judge.