

STATE OF NORTH CAROLINA

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GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

COUNTY OF CABARRUS

2020 APR 17 A 10:41

19A JUDICIAL DISTRICT

CABARRUS CO., C.S.C.

BY JL

In re Adoption of Local Rules for )  
Settlement Procedures in District )  
Court Family Financial Cases )

ADMINISTRATIVE ORDER

20-13

IT IS HEREBY ORDERED that the Local Rules Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases adopted on March 10, 2004 shall be rescinded and replaced with the attached Rules for Settlement Procedures in District Court Family Financial Cases incorporated herein. This shall be effective to all cases filed on or after March 1, 2020.

It is therefore so ORDERED this the 17 th day of April 2020.

Christy E. Wilhelm

The Honorable Christy E. Wilhelm  
Chief District Court Judge

IN THE SUPREME COURT OF NORTH CAROLINA

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ORDER ADOPTING THE RULES FOR SETTLEMENT  
PROCEDURES IN DISTRICT COURT FAMILY FINANCIAL CASES

Pursuant to subsection 7A-38.4A(k) and subsection 7A-38.4A(o) of the General Statutes of North Carolina, the Court hereby adopts the Rules for Settlement Procedures in District Court Family Financial Cases, which appear on the following pages. These rules supersede the Rules of the North Carolina Supreme Court Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases, published at 367 N.C. 1139-73.

The Rules for Settlement Procedures in District Court Family Financial Cases become effective on 1 March 2020.

This order shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 23rd day of January, 2020.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of January, 2020.



AMY L. FUNDERBURK  
Clerk of the Supreme Court

## **Rules for Settlement Procedures in District Court Family Financial Cases**

### **Rule 1. Initiating Settlement Procedures**

(a) **Purposes of Mandatory Settlement Procedures.** These rules are promulgated under N.C.G.S. § 7A-38.4A 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 in these rules is intended to limit or prevent the parties from engaging in settlement procedures voluntarily, either prior to or after those ordered by the court under these rules.

(b) **Duty of Counsel to Consult with Clients and Opposing Counsel Concerning Settlement Procedures.** In furtherance of the purposes set out in subsection (a) of this rule, upon being retained to represent any party to a district court case involving a family financial issue, including equitable distribution, child support, alimony, postseparation support, or a claim arising out of a contract between the parties under N.C.G.S. §§ 50-20(d), 52-10, or 52-10.1, or under Chapter 52B of the General Statutes of North Carolina, counsel shall advise his or her client regarding the settlement procedures approved by these rules. At, or prior to, the scheduling and discovery conference mandated by N.C.G.S. § 50-21(d), counsel for a party shall attempt to reach an agreement with opposing counsel on an appropriate settlement procedure for the action.

(c) **Ordering Settlement Procedures.**

(1) **Equitable Distribution Scheduling and Discovery Conference.** At the scheduling and discovery conference in equitable distribution cases, or at an earlier time as specified by local rule, the court shall issue a scheduling order. The scheduling order must include a requirement that the parties and their counsel attend a mediated settlement conference or, if the parties agree, another settlement procedure conducted under these rules, unless excused by the court under subsection (d) of this rule or by the court or mediator under Rule 4(a)(2). The court shall dispense with the requirement to attend a mediated settlement conference or other settlement procedure only for good cause shown.

(2) **Scope of Settlement Proceedings.** Any other family financial issue existing between the parties at the time that the equitable distribution settlement proceeding is ordered, or at any time thereafter, may be discussed, negotiated, or decided at the equitable distribution settlement proceeding. In judicial districts where a custody and visitation mediation program has been

established under N.C.G.S. § 7A-494, a child custody or visitation issue may be the subject of settlement proceedings ordered under these rules, but only by agreement of all parties and the mediator, when the parties have been exempted from, or have fulfilled, the program requirements. In judicial districts where a custody and visitation mediation program has not been established, a child custody or visitation issue may be the subject of settlement proceedings ordered under these rules by agreement of all parties and the mediator.

- (3) **Authorizing Settlement Procedures Other Than a Mediated Settlement Conference.** The parties and their attorneys are in the best position to determine which settlement procedure is appropriate for resolving their dispute. Therefore, the court shall order the use of any settlement procedure authorized under Rule 10, Rule 11, or Rule 12, or by local rule of the district court in the county or judicial district where the case is pending, if the parties have agreed upon the procedure to be used, the neutral to be employed, and the amount of compensation of the neutral. If the parties have not agreed on all three items, then the court shall order the parties and their attorneys to attend a mediated settlement conference conducted under these rules.

If the parties wish to use a another settlement procedure, then the parties must submit a Motion for an Order to Use Settlement Procedure Other Than Mediated Settlement Conference or Judicial Settlement Conference in Family Financial Case, Form AOC-CV-826, at the scheduling and discovery conference, which shall include:

- a. the settlement procedure chosen by the parties;
- b. the name, address, and telephone number of the neutral selected by the parties;
- c. the rate of compensation of the neutral; and
- d. a statement indicating that all parties consent to the motion.

- (4) **Content of the Order.** Using an Order for Mediated Settlement Conference in Family Financial Case, Form AOC-CV-824, the court shall:

- a. require that a mediated settlement conference or other settlement proceeding be held in the case;
- b. establish a deadline for the completion of the mediated settlement conference or proceeding; and

- c. require the parties to pay the neutral's fee at the conclusion of the mediated settlement conference or proceeding, unless otherwise ordered by the court.

If the settlement proceeding ordered by the court is a judicial settlement conference, then the parties shall not be required to compensate the neutral.

The court's ruling on the motion shall be contained in the court's scheduling order or, if no scheduling order is entered, shall be on the Order for Mediated Settlement Conference in Family Financial Case, Form AOC-CV-824. Any scheduling order entered at the completion of a scheduling and discovery conference held pursuant to local rule may be signed by the parties or their attorneys, in lieu of submitting the forms referenced in these rules for the selection of a mediator.

**(5) Court-Ordered Settlement Procedures in Other Family Financial Cases.**

- a. **By Motion of a Party.** Any party to a dispute involving a family financial issue, which was not previously ordered to a mediated settlement conference, may move the court for an order requiring the parties to participate in a settlement procedure. The motion shall be in writing, state the reasons why the motion should be granted, and be served on the nonmovant. Any objection to the motion or any request by a party for a hearing on the motion shall be filed in writing with the court within ten days of the date the motion was served. Thereafter, the court shall rule upon the motion and notify the parties or their attorneys of the ruling. If the court orders a settlement proceeding, then the proceeding shall be a mediated settlement conference conducted under these rules. The court may order other settlement procedures if the circumstances outlined in subsection (c)(3) of this rule have been satisfied.
- b. **By Order of the Court.** Upon its own motion, the court may order the parties and the parties' attorneys to attend a mediated settlement conference in any dispute involving a family financial issue or in a contempt proceeding involving a family financial issue.

The court may order a settlement procedure other than a mediated settlement conference only upon motion of the parties and a finding that the circumstances outlined in subsection (c)(3) of this rule have been met. The court shall consider the ability of the parties to compensate the

mediator or neutral for his or her services before ordering the parties to participate in a settlement procedure under subsection (c)(5) of this rule and shall comply with the provisions of Rule 2 regarding the appointment of a mediator.

(d) **Motion to Dispense with Settlement Procedures.** A party may file a motion to dispense with the settlement procedure ordered by the court. The motion shall state the reasons relief is sought and, for good cause shown, the court may grant the motion.

Good cause may include, but is not limited to, the fact that (i) the parties have participated in a settlement procedure, such as nonbinding arbitration or early neutral evaluation, prior to the court's order to participate in a mediated settlement conference; (ii) the parties have elected to resolve their case through arbitration under the Family Law Arbitration Act, N.C.G.S. §§ 50-41 to 50-62; or (iii) one of the parties has alleged domestic violence.

#### Comment

**Comment to Rule 1(d).** If a party is unable to pay the costs of the mediated settlement conference or lives a significant distance from the conference site, then the court should consider Rule 4 and Rule 7 prior to dispensing with

mediation for good cause. Rule 4 permits a party to attend the conference electronically under certain circumstances, and Rule 7 permits parties to attend the conference and obtain relief from the obligation to pay the mediator's fee.

### Rule 2. Designation of the Mediator

(a) **Designation of a Mediator by Agreement of the Parties.** By agreement, the parties may designate a family financial mediator certified under these rules by filing a Designation of Mediator in Family Financial Case, Form AOC-CV-825 (Designation Form), with the court at the scheduling and discovery conference. The Designation Form shall state: (i) the name, address, and telephone number of the designated mediator; (ii) the rate of compensation of the mediator; (iii) that the mediator and opposing counsel have agreed upon the designation and rate of compensation; and (iv) that the mediator is certified under these rules.

If the parties wish to designate a mediator who is not certified under these rules, the parties may nominate a noncertified mediator by filing a Designation Form with the court at the scheduling and discovery conference. If the parties choose to nominate a mediator, then the Designation Form shall state: (i) the name, address, and telephone number of the mediator; (ii) the training, experience, and other qualifications of the mediator; (iii) the rate of compensation of the mediator; (iv) that the mediator and opposing counsel have agreed upon the nomination; and (v) the rate of compensation, if any. The court shall approve the nomination if, in the court's

opinion, the nominee is qualified to serve as the mediator and the parties and the nominee have agreed on the rate of compensation.

A copy of each form submitted to the court and the court's order requiring a mediated settlement conference shall be delivered to the mediator by the parties.

(b) **Appointment of a Mediator by the Court.** If the parties cannot agree on the designation of a mediator, then the parties shall notify the court by filing a Designation Form requesting that the court appoint a mediator. The Designation Form shall be filed at the scheduling and discovery conference and state that the attorneys for the parties have discussed the designation of a mediator and have been unable to agree on a mediator. Upon receipt of a Designation Form requesting the appointment of a mediator, or upon the parties' failure to file a Designation Form with the court, the court shall appoint a family financial mediator certified under these rules who has expressed a willingness to mediate disputes within the judicial district.

In appointing a mediator, the court shall rotate through a list of available certified mediators. Appointments shall be made without regard to race, gender, religious affiliation, or whether the mediator is a licensed attorney. The court shall retain discretion to depart from a strict rotation of mediators when, in the court's discretion, there is good cause in a case to do so.

As part of the application or certification renewal process, all mediators shall designate the judicial districts in which they are willing to accept court appointments. Each designation is a representation that the designating mediator has read and will abide by the local rules for, and will accept appointments from, the designated district and will not charge for travel time and expenses incurred in carrying out his or her duties associated with those appointments. A mediator's refusal to accept an appointment in a judicial district designated by the mediator may be grounds for the mediator's removal from the district's appointment list by the Dispute Resolution Commission (Commission) or the chief district court judge.

The Commission shall provide the district court judges in each judicial district a list of certified family financial mediators requesting appointments in that district. The list shall contain each mediator's name, address, and telephone number. The list shall be provided to the judges electronically through the Commission's website at <https://www.ncdrc.gov>.

The Commission shall promptly notify the district court of any disciplinary action taken with respect to a mediator on the list of certified mediators for the judicial district.

(c) **Mediator Information.** To assist the parties in designating a mediator, the Commission shall assemble, maintain, and post a list of certified family financial mediators on its website at <https://www.ncdrc.gov>, accompanied by each mediator's contact information and the judicial districts in which each mediator is available to serve. When a mediator has supplied it to the Commission, the list shall also provide the mediator's biographical information, including information about the

mediator's education, professional experience, and mediation training and experience.

(d) **Withdrawal or Disqualification of the Mediator.**

- (1) Any party may move the chief district court judge of the judicial district where the case is pending for an order disqualifying the mediator using a Notice of Withdrawal/Disqualification of Mediator and Order for Substitution of Mediator, Form AOC-DRC-20. For good cause, an order disqualifying the mediator shall be entered.
- (2) A mediator who wishes to withdraw from a case may file a Notice of Withdrawal/Disqualification of Mediator and Order for Substitution of Mediator, Form AOC-DRC-20, with the chief district court judge of the judicial district where the case is pending.
- (3) If a mediator withdraws or is disqualified, then a substitute mediator shall be designated or appointed under this rule. A mediator who has withdrawn or been disqualified shall not be entitled to receive an administrative fee, unless the mediation has been commenced.

**Rule 3. The Mediated Settlement Conference**

(a) **Where the Mediated Settlement Conference Is to Be Held.** 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, then the mediator shall be responsible for reserving a neutral location in the county where the case is pending, for making arrangements for the conference, and for giving timely notice of the time and location of the conference to all attorneys, pro se parties, and other persons required to attend.

(b) **When the Mediated Settlement Conference Is to Be Held.** As a guiding principle, the mediated settlement conference should be held after the parties have had a reasonable time to conduct discovery, but well in advance of the trial date. The mediator is authorized to assist the parties in establishing a discovery schedule and completing discovery.

The court's order issued under Rule 1(c)(1) shall state a deadline for completion of the conference which shall not be more than 150 days after issuance of the court's order, unless extended by the court. The mediator shall set a date and time for the conference under Rule 6(b)(5).

(c) **Extending Deadline for Completion.** The court may extend the deadline for completion of the mediated settlement conference upon the court's own motion, on stipulation of the parties, or on suggestion of the mediator.



(d) **Recesses.** The mediator may recess the mediated settlement conference at any time and may set times for reconvening. If the time for reconvening is set during the conference, then no further notification is required for persons present at the conference.

(e) **The Mediated Settlement Conference Is Not to Delay Other Proceedings.** The mediated settlement conference shall not be the 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 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. The parties.
- b. At least one counsel of record for each party whose counsel has appeared in the case.

(2) Any party or other person required to attend a mediated settlement conference shall physically attend the conference until an agreement is reduced to writing and signed as provided in subsection (b) of this rule, or until an impasse has been declared. Any such party or person may have the attendance requirement excused or modified, including permitting participation without physical attendance, by:

- a. agreement of all parties and persons required to attend the conference and the mediator; or
- b. order of the court, upon motion of a party and notice to all parties and persons required to attend the conference and the mediator.

(b) **Scheduling.** Participants required to attend the mediated settlement conference shall promptly notify the mediator, after selection or appointment, of any significant problems that they may have with the dates for mediated settlement conference sessions before the completion deadline, and shall inform the mediator of any problems that arise before an anticipated conference session is scheduled by the mediator. If a scheduling conflict in another court proceeding arises after a conference session has been scheduled by the mediator, then participants shall promptly attempt to resolve the conflict under 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 20 June 1985.

(c) **Finalizing Agreement.**

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

a. If the parties conclude the mediated settlement conference with a written document containing all of the terms of their agreement for property distribution and do not intend to submit their agreement to the court for approval, then the agreement shall be signed by all parties and formally acknowledged as required by N.C.G.S. § 50-20(d). If the parties conclude the conference with a written document containing all of the terms of their agreement and intend to submit their agreement to the court for approval, then the agreement shall be signed by all parties, but need not be formally acknowledged. In all cases, the mediator shall report a settlement to the court and include in the report the name of the person responsible for filing closing documents with the court.

b. If the parties reach an agreement at the mediated settlement conference regarding property distribution and do not intend to submit their agreement to the court for approval, but are unable to complete a final document reflecting their settlement or have it signed and acknowledged as required by N.C.G.S. § 50-20(d), then the parties shall produce a written summary of their understanding and use it to guide them in writing any agreements as may be required to give legal effect to their understanding. If the parties intend to submit their agreement to the court for approval, then the agreement must be in writing and signed by the parties, but need not be formally acknowledged. The mediator shall facilitate the production of the summary and shall either:

1. 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
2. declare, in the mediator's discretion, a recess of the mediated settlement conference.

If a recess is declared, then the mediator may schedule another session of the conference if the mediator determines that it would assist the parties in finalizing a settlement.

- (2) In all cases where an agreement is reached after being ordered to mediation, whether prior to, or during, the mediation, or during a recess, the parties shall file a consent judgment or voluntary dismissal with the court within thirty days of the agreement or before the expiration of the mediation deadline, whichever is later. The mediator shall report to the court that the matter has been settled and who reported the settlement.
- (3) An agreement regarding the distribution of property, reached at a proceeding conducted under this section or during a recess of the mediated settlement conference, which has not been approved by a court, shall not be enforceable unless it has been reduced to writing, signed by the parties, and acknowledged as required under N.C.G.S. § 50-20(d).

(d) **Payment of the Mediator's Fee.** The parties shall pay the mediator's fee as provided by Rule 7.

(e) **No Recording.** There shall be no stenographic, audio, or video recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.

#### **Comment**

**Comment to Rule 4(c).** Consistent with N.C.G.S. § 7A-38.4A(j), 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 ensure that the terms of the agreement are reduced to writing and signed by the parties and their attorneys before ending the conference.

Cases in which an agreement on all issues has been reached should be disposed of as expeditiously as possible. This assures 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 the terms of the settlement confidential, then they may timely file closing documents with the court, as long as those documents do not contain confidential terms (e.g., a voluntary dismissal or consent judgment resolving all claims). Mediators will not be required by local rules to submit agreements to the court.

#### **Rule 5. Sanctions for Failure to Attend the Mediated Settlement Conference or Pay the Mediator's Fee**

Any person required to attend a mediated settlement conference or to pay a portion of the mediator's fee in compliance with N.C.G.S. § 7A-38.4A and these rules who fails to attend the conference or pay the mediator's fee without good cause shall be subject to the contempt power of the court and any monetary sanctions imposed by the court. The monetary sanctions may include, but are not limited to, the payment of fines, attorneys' fees, the mediator's fee, expenses, and loss of earnings incurred by persons attending the conference.

A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served on all parties and on any person against whom sanctions are being sought. The court may initiate sanction proceedings upon its own motion by the entry of a show cause order.

If the court imposes sanctions, it shall do so after notice and a hearing, in a written order making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal if the entire record, as submitted, is reviewed to determine whether the order is supported by substantial evidence.

## **Rule 6. Authority and Duties of the Mediator**

### **(a) Authority of the Mediator.**

- (1) Control of the Mediated Settlement Conference.** The mediator shall at all times be in control of the mediated settlement conference and the procedures to be followed. The mediator's conduct shall be governed by the Standards of Professional Conduct for Mediators.
- (2) Private Consultation.** The mediator may communicate privately with any participant during the mediated settlement conference. However, there shall be no ex parte communication before or outside the conference between the mediator and any counsel or party regarding any aspect of the proceeding, except about 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.

### **(b) Duties of the Mediator.**

- (1) Informing the Parties.** At the beginning of the mediated settlement conference, the mediator shall define and describe for the parties:
  - 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. the fact that the mediated settlement conference is not a trial, that the mediator is not a judge, and that the parties retain their right to a 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 mediated settlement conference;
- g. the inadmissibility of conduct and statements as provided by N.C.G.S. § 7A-38.4A(j);
- h. the duties and responsibilities of the mediator and the participants; and
- i. the fact that any agreement reached will be reached by mutual consent.

(2) **Disclosure.** The mediator has a duty to be impartial and to disclose to all participants any circumstance bearing on possible bias, prejudice, or partiality.

(3) **Declaring Impasse.** It is the duty of the mediator to determine in a timely manner that an impasse exists and that the mediated settlement conference should end. To that end, the mediator shall inquire of and consider the desires of the parties to cease or continue the conference.

(4) **Reporting Results of the Mediated Settlement Conference.**

- a. The mediator shall report the results of the mediated settlement conference and any settlement reached by the parties prior to, or during, a recess of the conference to the court. Mediators shall also report the results of mediations held in other district court family financial cases in which a mediated settlement conference was not ordered by the court. The report shall be filed on a Report of Mediator in Family Financial Case, Form AOC-CV-827, within ten days of the conclusion of the conference or within ten days of being notified of the settlement, and shall include the names of the persons who attended the conference, if a conference was held. If a partial agreement was reached at the conference, then the report shall state the issues that remain for trial. Local rules shall not require the mediator to send a copy of the parties' agreement to the court.
- b. If an agreement upon all issues was reached at the mediated settlement conference, then the mediator's report shall state whether the dispute will be resolved by a consent judgment or voluntary dismissal, and the name, address, and telephone number of the person designated by

the parties to file the consent judgment or dismissal with the court, as required under Rule 4(b)(2). The mediator shall advise the parties that, consistent with Rule 4(b)(2), their consent judgment or voluntary dismissal is to be filed with the court within thirty days of the conference or before the expiration of the mediation deadline, whichever is later. The mediator's report shall indicate that the parties have been so advised.

- c. The Commission or the North Carolina Administrative Office of the Courts (NCAOC) may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
  - d. A mediator who fails to report as required by this rule shall be subject to sanctions by the court. The sanctions shall include, but are not limited to, fines or other monetary penalties, decertification as a mediator, and any other sanctions available through the court's contempt power. The court shall notify the Commission of any sanction imposed against a mediator under this section.
- (5) **Scheduling and Holding the Mediated Settlement Conference.** The mediator shall schedule and conduct the mediated settlement conference 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 to all participants. In the absence of agreement, the mediator shall select a date and time for the conference. The deadline for completion of the conference shall be strictly observed by the mediator, unless the deadline is changed by written order of the court.

A mediator selected by agreement of the parties shall not delay scheduling or conducting the conference because one or more of the parties has not paid an advance fee deposit as required by the agreement.

## **Rule 7. Compensation of the Mediator and Sanctions**

(a) **By Agreement.** When a mediator is selected by agreement of the parties, compensation shall be as agreed upon between the parties and the mediator. Notwithstanding the terms of the parties' agreement with the mediator, subsection (e) of this rule shall apply to an issue involving compensation of the mediator. Subsections (d) and (f) of this rule 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 the mediator a one-time, per-case administrative fee of \$150, which accrues upon appointment.

(c) **Change of Appointed Mediator.** 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 of the \$150 one-time, per-case administrative fee, any other amount due for mediation services under subsection (b) of this rule, and any postponement fee owed under subsection (f) of this rule.

(d) **Payment of Compensation by the Parties.** Unless otherwise agreed to by the parties or ordered by the court, the mediator's fee shall be paid in equal shares by the parties. Payment shall be due upon the completion of the mediated settlement conference.

(e) **Inability to Pay.** No party found by the court to be unable to pay its full share of the mediator's fee shall be required to do so. Any party required to pay a share of a mediator's fee under subsections (b) and (c) of this rule may move the court for relief using a Petition and Order for Relief from Obligation to Pay All or Part of Mediator's Fee in Family Financial Case, Form AOC-CV-828.

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

Any mediator conducting a mediated settlement conference under 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 a court order issued under this rule.

(f) **Postponements and Fees.**

- (1) As used in subsection (f) of this rule, "postponement" means to reschedule or not proceed with a mediated settlement conference once a date for the conference has been scheduled by the mediator. After a conference has been scheduled for a specific date, a party may not unilaterally postpone the conference.
- (2) A mediated settlement conference may be postponed by a mediator for good cause only after notice by the movant to all parties of the reason for the postponement and a finding of good cause by the mediator. Good cause exists when the reason for the postponement involves a situation over which the party seeking the postponement has no control, including, but not limited to: (i) the illness of a party or attorney, (ii) a death in the family of a party or attorney, (iii) a sudden and unexpected demand by the court 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 (iv) inclement weather exists, such that travel is prohibitive. Where good cause is found, the mediator shall not assess a postponement fee.

- (3) The settlement of a case prior to the scheduled date for mediation shall be good cause for postponement; provided, however, that the mediator was notified of the settlement immediately after it was reached and at least fourteen calendar days prior to the date scheduled for the mediation.
- (4) Without a finding of good cause, a mediator may also postpone a scheduled mediated settlement conference session with the consent of all parties. A fee of \$150 shall be paid to the mediator if the postponement is allowed. However, if the request for a postponement is made within seven calendar days of the scheduled date for mediation, then the postponement fee shall be \$300. The postponement fee shall be paid by the party requesting the postponement, unless otherwise agreed to by the parties. Postponement fees are in addition to the one-time, per-case administrative fee provided for in subsection (b) of this rule.
- (5) If the parties select a certified mediator and contract with the mediator as to compensation, then the parties and the mediator may specify in their contract alternatives to the postponement fees otherwise required under subsection (f) of this rule.

#### **Comment**

**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 mediated 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).** Nonessential 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. 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 a postponement in instances where, in the mediator's judgment, the mediation could be held as scheduled.

#### **Rule 8. Mediator Certification and Decertification**

(a) The Commission may receive and approve applications for certification of persons to be appointed as mediators for family financial matters in district court. In order to be certified, an applicant must satisfy the requirements of this subsection.



- (1) The applicant for certification must have a basic understanding of North Carolina family law. Applicants should be able to demonstrate that they have completed at least twelve hours of basic family law education by:
  - a. attending workshops or programs on topics such as separation and divorce, alimony and postseparation support, equitable distribution, child custody and support, and domestic violence;
  - b. completing an independent study on these topics, such as viewing or listening to video or audio programs on family law topics; or
  - c. having equivalent North Carolina family law experience, including work experience that satisfies one of the categories set forth in the Commission's policy on interpreting Rule 8(a)(1) (e.g., the applicant is an experienced family law judge or board certified family law attorney).
  
- (2) The applicant for certification must:
  - a. have an Advanced Practitioner Designation from the Association for Conflict Resolution (ACR) and have earned an undergraduate degree from an accredited four-year college or university; or
  - b. have completed either (i) forty hours of Commission-certified family and divorce mediation training; or (ii) forty hours of Commission-certified trial court mediation training and sixteen hours of Commission-certified supplemental family and divorce mediation training; and be
    1. a member in good standing of the North Carolina State Bar or a member similarly in good standing of the bar of another state and eligible to apply for admission to the North Carolina State Bar under Chapter 1, Subchapter C, of the North Carolina State Bar Rules and the Rules Governing the Board of Law Examiners and the Training of Law Students, 27 N.C. Admin. Code 1C.0105, with at least five years of experience after the date of licensure as a judge, practicing attorney, law professor, or mediator, or must possess equivalent experience;

2. a licensed psychiatrist under N.C.G.S. § 90-9.1, with at least five years of experience in the field after the date of licensure;
  3. a licensed psychologist under N.C.G.S. §§ 90-270.1 to -270.22, with at least five years of experience in the field after the date of licensure;
  4. a licensed marriage and family therapist under N.C.G.S. §§ 90-270.45 to -270.63, with at least five years of experience in the field after the date of licensure;
  5. a licensed clinical social worker under N.C.G.S. § 90B-7, with at least five years of experience in the field after the date of licensure;
  6. a licensed professional counselor under N.C.G.S. §§ 90-329 to -345, with at least five years of experience in the field after the date of licensure; or
  7. an accountant certified in North Carolina, with at least five years of experience in the field after the date of certification.
- (3) If the applicant is not licensed to practice law in one of the United States, then the applicant must have completed six hours of training on North Carolina legal terminology, court structure, and civil procedure, provided by a Commission-certified trainer. An attorney licensed to practice law in a state other than North Carolina shall satisfy this requirement by completing a self-study course, as directed by Commission staff.
  - (4) If the applicant is not licensed to practice law in North Carolina, then the applicant must provide three letters of reference to the Commission about the applicant's good character, including at least one letter from a person with knowledge of the applicant's professional practice and experience qualifying the applicant under subsection (a) of this rule.
  - (5) The applicant must have observed, as a neutral observer and with the permission of the parties, two mediations involving a custody or family financial issue conducted by a mediator who (i) is certified under these rules, (ii) has an Advanced Practitioner Designation from the ACR, or (iii) is a mediator certified by the NCAOC for custody matters. Mediations eligible for observation shall also include mediations conducted in matters prior to litigation of family financial disputes that are mediated by agreement of the parties and incorporate these rules.

If the applicant is not an attorney licensed to practice law in one of the United States, then the applicant must observe three additional mediations involving civil or family-related disputes, or disputes prior to litigation that are conducted by a Commission-certified mediator and are conducted pursuant to a court order or an agreement of the parties incorporating the mediation rules of a North Carolina state or federal court.

All mediations shall be observed from their beginning until settlement, or until the point that an impasse has been declared, and shall be reported by the applicant on a Certificate of Observation - Family Financial Settlement Conference Program, Form AOC-DRC-08. All observers shall conform their conduct to the Commission's policy on *Guidelines for Observer Conduct*.

- (6) The applicant must demonstrate familiarity with the statutes, rules, standards of practice, and standards of conduct governing mediated settlement conferences conducted in North Carolina.
- (7) The applicant must be of good moral character and adhere to the Standards of Professional Conduct for Mediators when acting under these rules. On his or her application(s) for certification or application(s) for certification renewal, an applicant shall disclose any:
  - a. pending criminal charges;
  - b. criminal convictions;
  - c. restraining orders issued against him or her;
  - d. failures to appear;
  - e. pending or closed grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country;
  - f. disciplinary action taken against him or her by a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country, including, but not limited to, disbarment, revocation, decertification, or suspension of any professional license or certification, including the suspension or revocation of any license, certification, registration, or qualification to serve as a mediator in another state or country, even if stayed;
  - g. judicial sanctions imposed against him or her in any jurisdiction; or

- h. civil judgments, tax liens, or bankruptcy filings that occurred within the ten years preceding the date that the initial or renewal application was filed with the Commission.

A mediator shall report to the Commission any of the above-enumerated matters arising subsequent to the disclosures reported on the initial or renewal application for certification within thirty days of receiving notice of the matter.

As referenced in this subsection, criminal charges or convictions (excluding infractions) shall include felonies, misdemeanors, or misdemeanor traffic violations (including driving while impaired) under the law of North Carolina or another state, or under the law of a federal, military, or foreign jurisdiction, regardless of whether adjudication was withheld (prayer for judgment continued) or the imposition of a sentence was suspended.

- (8) The applicant must submit proof of the qualifications set out in this rule on a form provided by the Commission.
- (9) The applicant must pay all administrative fees established by the NCAOC upon the recommendation of the Commission.
- (10) The applicant must agree to accept the fee ordered by the court under Rule 7 as payment in full of a party's share of the mediator's fee.
- (11) The applicant must comply with the requirements of the Commission for completing and reporting continuing mediator education or training.
- (12) The applicant must agree, once certified, to make reasonable efforts to assist applicants for mediator certification in completing their observation requirements.

(b) No mediator who held a professional license and relied upon that license to qualify for certification under subsection (a)(2)(b) of this rule shall be decertified or denied recertification because the mediator's license lapses, is relinquished, or becomes inactive; provided, however, that this subsection shall not apply to a mediator whose professional license is revoked, suspended, lapsed, or relinquished, or whose professional license becomes inactive due to disciplinary action, or the threat of disciplinary action, from the mediator's licensing authority. Any mediator whose professional license is revoked, suspended, lapsed, relinquished, or whose professional license becomes inactive shall report the matter to the Commission.

(c) A mediator's certification may be revoked or not renewed at any time if it is shown to the satisfaction of the Commission that a mediator no longer meets the qualifications set out in this rule or has not faithfully observed these rules or those of

any judicial district in which he or she has served as a mediator. Any person who is or has been disqualified by a professional licensing authority of any state for misconduct shall be ineligible for certification under this rule. No application for certification renewal shall be denied on the ground that the mediator's training and experience does not satisfy a training and experience requirement promulgated after the date of the mediator's original certification.

### **Comment**

**Comment to Rule 8(a)(3).** Commission staff has discretion to waive the requirements set out in Rule 8(a)(3) if an applicant can demonstrate sufficient familiarity with North Carolina legal terminology, court structure, and civil procedure.

## **Rule 9. Certification of Mediation Training Programs**

(a) Certified training programs for mediators who are seeking certification under Rule 8(a)(2)(b) shall consist of a minimum of forty hours of instruction. The curriculum of such programs shall include the following topics:

- (1) Conflict resolution and mediation theory.
- (2) Mediation process and techniques, including the process and techniques of mediating family and divorce matters in district court.
- (3) Communication and information gathering.
- (4) Standards of conduct for mediators, including, but not limited to, the Standards of Professional Conduct for Mediators.
- (5) Statutes, rules, and practices governing mediated settlement conferences for family financial matters in district court.
- (6) Demonstrations of mediated settlement conferences, both with and without attorney involvement.
- (7) Simulations of mediated settlement conferences, involving student participation as the mediator, attorneys, and disputants, which shall be supervised, observed, and evaluated by program faculty.
- (8) An overview of North Carolina law as it applies to child custody and visitation, equitable distribution, alimony, child support, and postseparation support.
- (9) An overview of family dynamics, the effect of divorce on children and adults, and child development.
- (10) Protocols for screening cases for issues involving domestic violence and substance abuse.

(11) Satisfactory completion of an exam by all students testing their familiarity with the statutes, rules, and practices governing settlement procedures for family financial matters in district court.

(b) Certified training programs for mediators certified under Rule 8(a) shall consist of a minimum of sixteen hours of instruction and the curriculum shall include the topics listed in subsection (a) of this rule. There shall be at least two simulations as required by subsection (a)(7) of this rule.

(c) A training program must be certified by the Commission before a mediator's attendance at the program may be used to satisfy the training requirement under Rule 8(a). Certification does not need to be given in advance of attendance. Training programs attended prior to the promulgation of these rules, attended in other states, or approved by the ACR may be approved by the Commission if they are in substantial compliance with the standards set forth in this rule. The Commission may require attendees of an ACR-approved program to demonstrate compliance with the requirements of subsections (a)(5) and (a)(8) of this rule.

(d) To complete certification, a training program shall pay all administrative fees required by the NCAOC, in consultation with the Commission.

## **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 court may order the use of the settlement procedures under subsection (b) of this rule, unless the court finds: that the parties did not agree on the procedure to be utilized, the neutral to conduct the procedure, or the neutral's compensation; or that the procedure selected is not appropriate for the case or the parties. A judicial settlement conference may be ordered only if permitted by local rule.

(b) **Other Settlement Procedures Authorized by These Rules.** In addition to a mediated settlement conference, the following settlement procedures are authorized by these rules:

- (1) Neutral evaluation under Rule 11 (a settlement procedure in which a neutral offers an advisory evaluation of the case following summary presentations by each party).
- (2) A judicial settlement conference under Rule 12 (a settlement procedure in which the court assists the parties in reaching their own settlement, if allowed by local rule).
- (3) Other settlement procedures under Rule 13 (a settlement procedure described and authorized by local rule pursuant to Rule 13).

The parties may agree to arbitrate the dispute under the Family Law Arbitration Act, N.C.G.S. §§ 50-41 to 50-62, which shall constitute good cause for the court to dispense with the settlement procedures authorized under Rule 1(d).

(c) **General Rules Applicable to Other Settlement Procedures.**

- (1) **When the Proceeding Is Conducted.** The neutral shall schedule and conduct the proceeding no later than 150 days from the issuance of the court's order, or no later than the deadline for completion set out in the court's order, unless the deadline is extended by the court. The neutral shall make an effort to schedule the proceeding at a time that is convenient to all participants. In the absence of agreement, the neutral shall select a date and time for the proceeding. The deadline for the completion of the proceeding shall be strictly observed by the neutral, unless the deadline is changed by written order of the court.
- (2) **Extensions of Time.** A party or a neutral may request that the court extend the deadline for completion of the settlement proceeding. The request for an extension shall state the reasons the extension is sought and shall be served by the movant on the other parties and the neutral. The court may grant the extension and enter an order setting a new deadline for the completion of the settlement proceeding. A copy of the order shall be delivered to all parties and the neutral by the person who sought the extension.
- (3) **Where the Proceeding Is Conducted.** Settlement proceedings shall be held in any location agreeable to the parties. If the parties cannot agree to a location, then the neutral shall be responsible for reserving a neutral place, making arrangements for the proceeding, and giving timely notice of the time and location of the proceeding to all attorneys and pro se parties.
- (4) **No Delay of Other Proceedings.** Settlement proceedings shall not be the cause for a 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 court.
- (5) **Inadmissibility of Settlement Proceedings.** Evidence of statements made and conduct that occurs in a mediated settlement conference or other settlement proceeding conducted under this rule, whether attributable to a party, mediator, neutral, or neutral-observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any

proceeding in the case or in another civil dispute involving the same claim, except:

- a. in proceedings for sanctions under subsection (c) of this rule;
- b. in proceedings to enforce or rescind a settlement of the dispute;
- c. in disciplinary proceedings before the North Carolina State Bar or any agency established to enforce the Standards of Professional Conduct for Mediators or standards of conduct for other neutrals; or
- d. in proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, "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 a proceeding conducted under this rule, or during its recesses, shall be enforceable unless the agreement has been reduced to writing, signed by the parties, and complies with the requirements of Chapter 50 of the General Statutes of North Carolina. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, neutral, or neutral-observer present at a settlement proceeding under this rule shall be compelled to testify or produce evidence in any civil proceeding concerning statements made and conduct that occurs in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding under subsection (c) of this rule. This includes proceedings to enforce or rescind a settlement of the dispute, except to attest to the signing of any agreement, and during proceedings for sanctions under this section, proceedings to enforce laws concerning juvenile or elder abuse, and disciplinary hearings before the North Carolina State Bar or any agency established to enforce the Standards of Professional Conduct for Mediators or standards of conduct for other neutrals.

- (6) **No Record Made.** There shall be no stenographic or other record made of any proceedings under these rules.
- (7) **Ex Parte Communications Prohibited.** Unless all parties agree otherwise, there shall be no ex parte communication prior to the conclusion of the proceeding between the neutral and a



party or a party's attorney on any matter related to the proceeding, except about administrative matters.

(8) **Duties of the Parties.**

a. **Attendance.** All parties and attorneys shall attend any settlement proceeding ordered by the court.

b. **Finalizing Agreement.**

1. If an agreement that resolves all issues in the dispute is reached at the neutral evaluation, judicial settlement conference, or other settlement proceeding, then the essential terms of the agreement shall be reduced to writing in a summary memorandum, unless the parties have reduced their agreement to writing in another form, signed the writing, and, in all other respects, complied with the requirements of Chapter 50 of the General Statutes of North Carolina. The parties and the parties' attorneys shall use the summary memorandum to guide them in drafting any agreements or orders that may be required to give legal effect to the terms of their agreement. Within thirty days of the proceeding, all final agreements and other dispositive documents shall be executed by the parties and notarized, and all judgments or voluntary dismissals shall be filed with the court by such persons as the parties or the court designate.
2. If an agreement that resolves all issues in the dispute is reached prior to the neutral evaluation, judicial settlement conference, or other settlement proceeding, or is finalized while the proceeding is in recess, then the parties shall reduce the terms of the agreement to writing and sign the writing, along with their counsel. The agreement shall comply with the requirements of Chapter 50 of the General Statutes of North Carolina. Any consent judgment or voluntary dismissal disposing of all issues shall be filed with the court within thirty days of the proceeding or before the expiration of the deadline for completion of the proceeding, whichever is later.
3. When an agreement is reached upon all issues, all attorneys of record must notify the court within four business days of the settlement and advise the court

who will sign the consent judgment or voluntary dismissal.

- c. **Payment of the Neutral's Fee.** The parties shall pay the neutral's fee under subsection (c)(12) of this rule, except that no compensation shall be required for a judicial settlement conference.
- (9) **Sanctions for Failure to Attend Other Settlement Procedure or Pay the Neutral's Fee.** Any person required to attend a settlement proceeding or pay a neutral's fee in compliance with N.C.G.S. § 7A-38.4A and these rules who fails to attend the proceeding or pay the neutral's fee without good cause shall be subject to the contempt power of the court and any monetary sanctions imposed by the court. The monetary sanctions may include, but are not limited to, the payment of fines, attorneys' fees, the neutral's fee, expenses, and loss of earnings incurred by persons attending the settlement proceeding. A party seeking sanctions against a party, or the court on its own motion, shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served on all parties and 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.
- (10) **Selection of Neutrals in Other Settlement Procedures.** The parties may select any person whom they believe can assist them with the settlement of their case to serve as a neutral in a settlement proceeding authorized under these rules, except in a judicial settlement conference.

Notice of the parties' selection shall be given to the court and to the neutral by filing a Motion for an Order to Use Settlement Procedure Other Than Mediated Settlement Conference or Judicial Settlement Conference in Family Financial Case, Form AOC-CV-826, at the scheduling and discovery conference or the court appearance during which potential settlement procedures are considered by the court. The motion shall state: (i) the name, address, and telephone number of the neutral selected; (ii) the rate of compensation of the neutral; and (iii) that the neutral and opposing counsel have agreed upon the selection and compensation.

If the parties are unable to select a neutral by agreement, then the court shall deny the motion and order the parties to attend a mediated settlement conference.

- (11) **Disqualification of Neutrals.** Any party may move the court for an order disqualifying a neutral and, for good cause, an order disqualifying the neutral shall be entered. Good cause exists if the selected neutral has violated the standards of conduct of the North Carolina State Bar or any standards of conduct for neutrals adopted by the Supreme Court.
- (12) **Compensation of Neutrals.** A neutral's compensation shall be paid in an amount agreed to by the parties and the neutral. Time spent reviewing materials in preparation for the neutral evaluation, conducting the proceeding, and making and reporting the award shall be compensable time. The parties shall not compensate a settlement judge.
- (13) **Authority and Duties of the Neutral.**
- a. **Authority of the Neutral.**
1. **Control of the Proceeding.** The neutral shall at all times be in control of the proceeding and the procedures to be followed.
  2. **Scheduling the Proceeding.** The neutral shall make a good faith effort to schedule the proceeding at a time that is convenient to the participants, attorneys, and the neutral. In the absence of agreement, the neutral shall select the date and time for the proceeding. The deadline set by the court for the completion of the proceeding shall be strictly observed by the neutral, unless the deadline is changed by written order of the court.
- b. **Duties of the Neutral.**
1. **Informing the Parties.** At the beginning of the proceeding, the neutral shall define and describe for the parties:
    - i. the process of the proceeding;
    - ii. the differences between the proceeding ordered by the court and other forms of conflict resolution;
    - iii. the costs of the proceeding;
    - iv. the admissibility of conduct and statements as provided by N.C.G.S. § 7A-38.1(l) and subsection (c)(5) of this rule; and

- v. the duties and responsibilities of the neutral and the participants.
2. **Disclosure.** The neutral has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice, or partiality.
3. **Reporting the Results of the Proceeding.** The neutral, settlement judge, or other type of neutral shall report the results of the proceeding to the court within ten days, using a Report of Neutral Conducting Settlement Procedure Other Than Mediated Settlement Conference in Family Financial Case, Form AOC-CV-834, in accordance with Rule 11 and Rule 12. The NCAOC, in consultation with the Commission, may require the neutral to provide statistical data for evaluation of other settlement procedures.
4. **Scheduling and Holding the Proceeding.** It is the duty of the neutral to schedule and conduct the proceeding prior to the completion deadline set out in the court's order. The deadline for completion of the proceeding shall be strictly observed by the neutral, unless the deadline is changed by a written order of the court.

#### **Rule 11. Rules for Neutral Evaluation**

(a) **Nature of Neutral Evaluation.** Neutral evaluation is an informal, abbreviated presentation of the facts and issues by the parties to a neutral at an early stage of the case. The neutral is responsible for evaluating the strengths and weaknesses of the case, providing a candid assessment of the merits of the case, the settlement value, and a dollar value or range of potential awards if the case proceeds to trial. The neutral is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.

(b) **When the Neutral Evaluation Conference Is to Be Held.** As a guiding principle, the neutral evaluation conference should be held at an early stage of the case, after the time for the filing of answers has expired but in advance of the expiration of the discovery period.

(c) **Preconference Submissions.** No later than twenty days prior to the date established for the neutral evaluation conference to begin, each party shall provide the neutral with written information about the case and shall certify to the neutral that they provided a copy of such summary to all other parties in the case. The information provided to the neutral and the other parties 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 neutral and to the other parties under this paragraph shall not be filed with the court.

(d) **Replies to Preconference Submissions.** No later than ten days prior to the date set for the neutral evaluation conference to begin, any party may, but is not required to, send additional information to the neutral in writing in response to a question from an opposing party. The response furnished to the neutral shall be served on all other parties and the party sending such response shall certify such service to the neutral, but the response shall not be filed with the court.

(e) **Neutral Evaluation Conference Procedure.** Prior to a neutral evaluation conference, the neutral may request additional information in writing from any party. At the conference, the neutral may address questions to the parties and give the parties an opportunity to complete their summaries with a brief oral statement.

(f) **Modification of Procedure.** Subject to the approval of the neutral, the parties may agree to modify the procedures required by these rules for neutral evaluation.

(g) **Neutral's Duties.**

- (1) **Neutral's Opening Statement.** At the beginning of the neutral evaluation conference, in addition to the matters set out in Rule 10(c)(13)(b), the neutral shall define and describe for the parties:
  - a. the fact that the neutral evaluation conference is not a trial, that the neutral is not a judge, that the neutral's opinions are not binding on any party, and that the parties retain the right to a trial if they do not reach a settlement; and
  - b. the fact that any settlement reached will be only by mutual consent of the parties.
- (2) **Oral Report to Parties by Neutral.** In addition to the written report to the court required under these rules, at the conclusion of the neutral evaluation conference, the neutral shall issue an oral report to the parties advising them of the neutral's opinion about the case. The opinion shall include a candid assessment of the merits of the case, an estimated settlement value, and the strengths and weaknesses of each party's claims in the event that the case proceeds to trial. The oral report shall also contain a suggested settlement or disposition of the case and the reason for the neutral's suggestion. The neutral shall neither reduce his or her oral report to writing nor inform the court of the oral report.

- (3) **Report of Neutral to Court.** Within ten days after the completion of the neutral evaluation conference, the neutral shall file a written report with the court using a NCAOC form. The report shall inform the court when and where the conference was held, the names of those who attended the conference, and the name of any party or attorney known by the neutral to have been absent from the conference without permission. The report shall also inform the court whether an agreement was reached by the parties. If a partial agreement is reached at the conference, then the report shall state the issues that remain for trial. In the event of a full or partial agreement, the report shall also state the name of the person designated to file the consent judgment or voluntary dismissal with the court. Local rules shall not require the neutral to send a copy of any agreement reached by the parties to the court.

(h) **Neutral's Authority to Assist in Negotiations.** If all parties to the neutral evaluation conference request and agree, then a neutral may assist the parties in settlement discussions. However, if the parties do not reach a settlement during such discussions, then the neutral shall complete the conference and make his or her written report to the court as if the settlement discussions had not occurred. If the parties reach an agreement at the conference, then they shall reduce their agreement to writing as required under Rule 10(c)(8)(b).

## **Rule 12. Rules for Judicial Settlement Conferences**

(a) **Settlement Judge.** A judicial settlement conference shall be conducted by a district court judge who is selected by the chief district court judge of the judicial district. Unless specifically approved by the chief district court judge, the settlement judge shall not be assigned to try the case in the event that the case proceeds to trial.

(b) **Conducting the Judicial Settlement Conference.** The form and manner of conducting a judicial settlement 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.

(c) **Confidential Nature of the Judicial Settlement Conference.** A judicial settlement conference shall be conducted in private. There shall be no stenographic or other recording of the conference. Persons other than the parties and their counsel may attend the conference only with the consent of all parties. The settlement judge shall not communicate with anyone regarding communications made during the conference, except that the settlement judge may report that a settlement was reached and, with the parties' consent, the terms of the settlement.

(d) **Report of the Settlement Judge.** Within ten days after the completion of the judicial settlement conference, the settlement judge shall file a

written report with the court using a NCAOC form, stating when and where the conference was held, the names of those persons who attended the conference, and the name of any party or attorney known by the settlement judge to have been absent from the conference without permission. The report shall also inform the court whether an agreement was reached by the parties. If a partial agreement is reached at the conference, then the report shall state the issues that remain for trial. In the event of a full or partial agreement, the report shall also state the name of the person designated to file the consent judgment or voluntary dismissal with the court. Local rules shall not require the settlement judge to send a copy of any agreement reached by the parties to the court.

### **Rule 13. Local Rule Making**

The chief district court judge of any district conducting settlement procedures under these rules is authorized to publish local rules, not inconsistent with these rules and N.C.G.S. § 7A-38.4A, implementing settlement procedures in that district.

### **Rule 14. Definitions**

(a) "Court," as used throughout these rules, refers to a judge of the district court in the judicial district where a case is pending who has administrative responsibility for the case as the assigned or presiding judge or, as appropriate, the judge's designee.

(b) "NCAOC form" refers to a form prepared, printed, and distributed by the NCAOC to implement these rules, or a form approved by local rule which contains at least the same information as a form prepared by the NCAOC. Proposals for the creation or modification of a form may be initiated by the Commission.

(c) "Family financial case" refers to any civil case in district court in which a claim for equitable distribution, child support, alimony, or postseparation support is made, or in which there are claims arising out of contracts between the parties under N.C.G.S. §§ 50-20(d), 52-10, 52-10.1, or under Chapter 52B of the General Statutes of North Carolina.

### **Rule 15. Time Limits**

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

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