

SEVENTEEN-B JUDICIAL DISTRICT

DISTRICT COURT

FAMILY COURT DIVISION

AMENDED

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

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The District Court Judges and the Bar Association of the 17-B Judicial District recognize that alternatives to litigation often provide better means of resolving disputes, and support a program of appropriate dispute resolution in all cases involving equitable distribution and other family financial matters in cases filed in the 17-B Judicial District. Accordingly, these rules implement a menu of ADR techniques available for use in alimony, post-separation support and equitable distribution proceedings, with the goal of expediting resolution and reducing costs to litigants. **These rules do not apply to any actions which include domestic violence only, however, if any other claims are pending, then the Rules do apply.**

RULE 1. INITIATING SETTLEMENT PROCEDURES.

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

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

Rule 1.3: Ordering Settlement Procedures.

- (a) **Equitable Distribution Scheduling Conference.** At the scheduling conference mandated by G.S. 50-21(d) in an equitable distribution action, the Court shall include in its scheduling order a requirement that the parties and their counsel attend a mediated settlement conference or, if the parties agree, other settlement procedures conducted pursuant to these rules, unless excused by the Court pursuant to these Rules.
- (b) **Scope of Settlement Proceedings.** All other financial issues existing between the parties when the equitable distribution settlement proceeding is ordered, or at anytime thereafter, shall be discussed, negotiated or decided at the proceeding.

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

The motion for an order to use a settlement procedure other than a mediated settlement conference shall be submitted on an AOC form, or in letter or motion form, at the scheduling conference and shall state:

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

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

- (e) **Court-Ordered Settlement procedures in Other Family Financial Cases.** Any party to an action involving other family financial issues may move the Court to order the parties to participate in an expedited settlement conference. Such motion shall be made in writing, state the reason why the order should be allowed and be served on the non-moving party. Any objection to the motion or request shall be filed in writing with the Court within 10 days after the date of service of the motion. Thereafter, the Judge shall rule upon the motion and notify the parties or their attorneys of the ruling. If the Court orders an **expedited settlement conference proceeding, then the proceeding shall be a mediated settlement conference conducted pursuant to these Rules. Other settlement procedures may be ordered if the circumstances outlined in subsection (c) above have been met.** The Court may enter an Order upon review of the written documents without a hearing and may enter the Order out of term and out of county.

- (f) **Motion to Dispense with Settlement Procedures.** A party may move the Court to dispense with the mediated settlement conference or other settlement procedures. Such motion shall be in writing and shall state the reasons the relief is sought. For good cause shown, the Court may grant the motion. Such good cause may include, but are not limited to, the fact that the parties have submitted the action to arbitration or that one of the parties has alleged domestic violence. The Court may

also dispense with the mediated settlement conference for good cause upon its own motion.

RULE 2. SELECTION OF MEDIATOR.

Rule 2.1: The parties may, by agreement, select a mediator certified by the Dispute Resolution Commission to conduct a mediated settlement conference in family financial cases. Upon doing so, the parties shall file a Designation of Mediator by Agreement. Such designation shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation and state that the mediator is certified pursuant to these Rules

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

Rule 2.3: Designations of mediators and nominations of mediators shall be made on an AOC form. A copy of each such form submitted to the Court and a copy of the Court's order requiring a mediated settlement conference shall be delivered to the mediator by the parties.

Rule 2.4: To assist the parties in the selection of a mediator by agreement, the Dispute Resolution Commission has provided on line a list of all certified Family Financial Mediators and all Superior Court Mediators who wish to mediation family financial cases in the county.

RULE 3. APPOINTMENT OF CERTIFIED MEDIATOR BY THE COURT.

Rule 3.1: If the parties cannot agree upon the selection of a mediator, they shall so notify the court and request that the Court appoint a mediator. The motion shall be filed at the scheduling conference and shall state that the attorneys for the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The motion shall be on an AOC form. If the parties fail to select a Mediator or cannot agree on a mediator within 90 days of the filing of the initial claim for Equitable Distribution, the Court by way of its own motion shall appoint a Certified Mediator.

Rule 3.2: Upon receipt of a motion to appoint a mediator, or in the event the parties have not filed a designation or nomination of mediator, the Court shall, under Rules established by the Chief District Court Judge, appoint a mediator who has been certified by the Dispute Resolution

Commission to conduct mediated settlement conferences in family financial cases and who has indicated a willingness to mediate such cases in the county where the case is pending.

Rule 3.3: Any party may move a Court of the District where the action is pending for an Order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to Rule 3.2 above. Nothing in this provision shall preclude mediators from disqualifying themselves.

RULE 4. THE MEDIATED SETTLEMENT CONFERENCE.

Rule 4.1: The mediated settlement conference shall be held in any location agreeable to the parties and the mediator. If the parties cannot agree to a location, the mediator shall be responsible for reserving a neutral place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and pro se parties.

Rule 4.2: The conference should be held within one hundred eight (180) days of the filing of the first claim seeking Equitable Distribution or other Family Financial Relief.

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

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

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

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

Rule 5.1: The following persons shall attend a mediated settlement conference:

- (a) Parties.
- (b) Attorneys. At least one counsel of record for each party whose counsel has appeared in the action, unless both counsel agree not to attend.

Rule 5.2: Any person required to attend a mediated settlement conference shall physically attend until such time as an agreement has been reached or the mediator, after conferring with

the parties and their counsel, if any, declares an impasse. No mediator shall prolong a conference unduly. Any such person may have the attendance requirement excused or modified, including allowing a person to participate by phone, by agreement of both parties and the mediator or by order of the Court. Ordinarily, attorneys for the parties may be excused from attending only after they have appeared at the first session.

Rule 5.3: The essential terms of the parties' agreement shall be reduced to writing as a summary memorandum at the conclusion of the conference unless the parties have executed final documents. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to its terms. Except as set out below, **within thirty (30) days of reaching agreement at the conference**, all final agreements and other dispositive documents shall be executed by the parties and notarized, and final typewritten judgments or voluntary dismissals shall be filed with the Court by such persons as the parties or the Court shall designate. In the event the parties fail to agree on the wording or terms of a final agreement or court order, the mediator may schedule another session if the mediator determines that it would assist the parties. If the mediator determines that further mediation will not be helpful, then the mediator shall report the need for no further mediation to the court on the authorized form. Either party may request Court intervention if the parties are unable to agree on the final terms.

The thirty (30) day period above shall not apply if a document such as a Qualified Domestic Relations Order which must be approved by an outside party is required to complete the action.

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

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

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

Rule 6.2: A party to the action seeking sanctions, or the Court of its own motion, shall do so in a written motion stating the grounds for the motion and the relief sought. Said motions 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 hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law.

RULE 7. AUTHORITY AND DUTIES OF MEDIATORS.

Rule 7.1: The mediator shall at all times be in control of the conference and the procedures to be followed. However, the mediator's conduct shall be governed by standards of conduct promulgated by the Supreme Court upon the recommendation of the Dispute Resolution

Commission, which shall contain a provision prohibiting mediators from prolonging a conference unduly.

Rule 7.2: The mediator may communicate privately with any participant during the conference between the mediator and any counsel or party on any matter touching the proceeding, except with regard to scheduling matters. Nothing in this rule prevents the mediator from engaging in ex parte communications, with the consent of the parties, for the purpose of assisting settlement negotiations. There shall be a block on the form designating mediator which shall be checked if the parties do not consent to ex parte communications as the mediator and the attorneys deem appropriate.

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

- (a) The process of mediation;
- (b) The differences between mediation and other forms of conflict resolution;
- (c) The costs of the mediated settlement conference;
- (d) That the mediated settlement conference is not a trial, the mediator is not a judge and the parties retain their right to trial if they do not reach a settlement;
- (e) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
- (f) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
- (g) The admissibility of conduct and statements as provided by G.S. 7A-38.1(1);
- (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.

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

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

Rule 7.6: The mediator shall report to the Office of the District Court Judge and Clerk of Court using an AOC form within ten (10) days of the conference, whether or not the parties reached an agreement. If the case is settled or otherwise disposed of prior to the conference, the mediator shall file the report indicating the disposition of the case. If an agreement was reached at the conference, the report shall state whether the action will be conducted by consent judgment or voluntary dismissal and shall identify the persons designated to file such consent judgments or dismissals. If partial agreements are reached at the conference, the report shall state what issues remain for trial. The mediator's report shall inform the Court of the absence without permission of any party or attorney from the mediated settlement conference.

Rule 7.7: The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the Court's order. The mediator shall make an effort to schedule

the conference at a time that is convenient with all participants. In the absence of an agreement, the mediator shall select a date and time for the conference. The mediator shall strictly observe deadlines for completion of the conference, unless changed by written order of the Court.

RULE 8. COMPENSATION OF THE MEDIATOR.

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

Rule 8.2: When the Court appoints the mediator, the parties shall compensate the mediator for mediation services at the rate of \$125.00 per hour. The parties shall also pay to the mediator a one-time per case administrative fee of \$125.00 which accrues upon appointment.

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

Rule 8.4: No party found by the Court to be unable to pay a full share of mediator's fee shall be required to pay a full share. Any party required to pay a share of a mediator fee may move the Court to pay according to the Court's determination of the party's ability to pay. In ruling on such motions, the Judge may consider the income and assets of the movant and the outcome of the action. The Court shall enter an order granting or denying the party's motion. In so ordering, the Court may require that one or more shares be paid out of the marital estate. Any mediator conducting a settlement conference pursuant to these Rules shall accept as payment in full of a party's share of the mediator's fee that portion paid by, or on behalf of, the party pursuant to an Order of the Court issued pursuant to this Rule.

Rule 8.5: Except where excused by these Rules or by Order of the Court, the failure of a party to make timely payment of his or her share of the mediator's fee shall constitute contempt of Court and may result in the imposition of any and all lawful sanctions.

RULE 9. OTHER SETTLEMENT PROCEDURES.

Rule 9.1: Upon receipt of a motion by the parties seeking authorization to utilize a settlement procedure in lieu of a mediated settlement conference, the Court may order the use of the procedure requested unless the Court finds that the parties did not agree upon the procedure to be utilized, the neutral to conduct it and the neutral's compensation; or that the procedure selected is not appropriate for the case or the parties.

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

- (a) Neutral Evaluation (Rule 10), in which a neutral offers an advisory evaluation of the case following summary presentations by each party.

- (b) Judicial Settlement Conference (Rule 11), in which a District Court Judge assists the parties in reaching their own settlement. This option must be approved by the Chief District Court Judge and generally will only be allowed when at least one litigant is pro se.
- (c) Binding Arbitration (Rule 12.)

Rule 9.3: The proceedings under this section shall have the same requirements and protection of settlement negotiations as set forth in Rule 7.3.

RULE 10. RULES FOR NEUTRAL EVALUATION.

Rule 10.1: Neutral evaluation is an informal, abbreviated presentation of facts and issues by the parties to an evaluator at an early stage of the case. The neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, providing a candid assessment of the merits of the case, settlement value and a dollar value or range of potential awards if the case proceeds to trial. The evaluator is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.

Rule 10.2: The neutral evaluation conference should be held within one hundred twenty (120) days of the filing of the initial claim for equitable distribution or family financial matters unless a motion for expedited proceeding is filed as set for in Rule 1.3(c).

Rule 10.3: No later than one hundred twenty (120) days prior to the date established for the neutral evaluation conference to begin, each party shall furnish the evaluator with written information about the case and shall at the same time, certify to the evaluator that they served a copy of such summary on all other parties to the case. The information provided to the evaluator and the other parties hereunder shall be a summary of the significant facts and issues in the party's summary. Information provided to the evaluator and to the other parties pursuant to this paragraph shall not be filed with the Court.

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

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

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

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

Rule 10.7: In addition to the written report to the Court required under these Rules, at the conclusion of the neutral evaluation conference the evaluator shall issue an oral report to the parties advising them of his/her opinions of the case. Such opinion shall include a candid assessment of the merits of the case, estimated settlement value and the strengths and weaknesses of each party's claims if the case proceeds to trial. The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefore. The evaluator shall not reduce his/her oral report to writing and shall not inform the Court thereof.

Rule 10.8: Within ten (10) days after the completions of the neutral evaluation conference, the evaluator shall file a written report with the Court using an AOC form, stating when and where the conference was held, the names of those persons who attended the conference, whether or not an agreement was reached by the parties and the name of the person designated to file judgments or dismissals concluding the action.

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

Rule 10.10: The proceedings under this section shall have the same requirements and protection of settlement negotiations as set forth in Rule 7.3.

RULE 11. JUDICIAL SETTLEMENT CONFERENCE.

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

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

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

RULE 12. BINDING ARBITRATION.

Rule 12.1: The parties may, with consent of all parties, agree to attend Binding Arbitration. If the parties and counsel agree to attend Binding Arbitration, such agreement must be made in writing by way of Stipulation filed with the Court.

RULE 13. TIME LIMITS.

Rule 13.1: Any time limit provided for by these Rules may be waived or extended for good cause shown. Time shall be counted pursuant to the Rules of Civil Procedure.

Rule 13.2: The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by the Order of the Court.

THESE AMENDED RULES SHALL BECOME EFFECTIVE FOR ALL FAMILY FINANCIAL CASES, INCLUDING EQUITABLE DISTRIBUTION ACTIONS, FILED _____, 2007 AND THEREAFTER.

This the _____ day of _____, 2007.

CHARLES M. NEAVES, JR.
Chief District Court Judge