

**DISTRICTS 4A and 4B
LOCAL RULES IMPLEMENTING SETTLEMENT PROCEDURES
IN EQUITABLE DISTRIBUTION AND OTHER
FAMILY FINANCIAL CASES**

RULE 1. INITIATING SETTLEMENT PROCEDURES

A. PURPOSE OF MANDATORY SETTLEMENT PROCEDURES.

Pursuant to G.S. 7A-38.4A, 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.

B. DUTY OF COUNSEL TO CONSULT WITH CLIENTS AND OPPOSING COUNSEL CONCERNING SETTLEMENT PROCEDURES.

In furtherance of this purpose, counsel, upon being retained to represent any party to a district court case involving family financial issues, including equitable distribution and alimony, shall advise his or her client regarding the settlement procedures approved by these Rules and shall attempt to reach agreement with opposing counsel on the appropriate settlement procedure for the action.

C. ORDERING SETTLEMENT PROCEDURES.

(1) Equitable Distribution Mediation Scheduling. A Mediated Settlement Conference Form (District 4 Form FFS 1) shall be completed and returned to the designated Trial Court Coordinator (TCC) within 90 days from the date a party **first** alleges the issues of equitable distribution or alimony in a pleading. The attorney or pro se party requesting equitable distribution or alimony shall confer with the opposing party or their attorney, **agree on the relevant information**, and complete and return the form to the TCC by mail or by facsimile. **The TCC shall then convert said Mediated Settlement Conference Form into a Mediated Settlement Conference Order, which will be signed by a Judge. If the parties do not agree and the Trial Court Coordinator does not receive the Mediated Settlement Conference form within 90 days**, then the TCC shall select a mediator and complete the Mediated Settlement Conference Order. The court shall dispense with or modify the requirement to complete a Mediated Settlement Conference Order or other settlement procedure only for good cause shown upon motion

of the requesting party. A party's physical presence out of the jurisdiction does not constitute good cause for dispensing with mediation or other settlement procedure.

The designated TCC for District 4 is:

Jennifer Harrell
Sampson County Courthouse
101 East Main Street
Clinton, NC 28328
Telephone: 910-596-6673
Facsimile: 910-596-6613

- (2) **Scope of Settlement Proceedings.** Any other issues existing between the parties when the equitable distribution settlement proceeding is ordered, or at any time thereafter, may be discussed, negotiated or decided at the proceeding.
- (3) **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 if the parties have agreed upon the procedure to be used. If the parties have not agreed upon the procedure, the mediator and the mediator's compensation, then the Court shall order the parties and their counsel to attend a mediated settlement conference conducted pursuant to these Rules.
- (4) **Content of Order.** The Court's Mediated Settlement Conference Order (District 4 Form FFS 2), which shall be prepared by the Trial Court Coordinator, shall (1) require the mediated settlement conference or other settlement proceeding be held in the case; (2) establish a deadline for the completion of the conference or proceeding; (3) designate the mediator by stating the name, address and telephone number of the mediator selected; (4) state the rate of compensation of the mediator; (5) state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; (6) state that the mediator is certified pursuant to these Rules if the mediator is appointed by the Trial Court Coordinator without agreement of the parties; and (7) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference or proceeding unless otherwise ordered by the Court.
- (5) **Court-Ordered Settlement Procedures in Other Family Financial Cases.** Any party to an action involving family financial issues not previously ordered to a mediated settlement conference may move the

Court to order the parties to participate in a settlement procedure. Such motion shall be made in writing and be served on the non-moving party. After the motion is properly scheduled, the Judge 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 pursuant to these Rules. A party's physical presence out of the jurisdiction does not constitute good cause for dispensing with mediation or other settlement procedure.

- (6) **Motion to Dispense With Settlement Procedures.** A party may move the Court to dispense with the mediated settlement conference or other settlement procedure. Such motion shall be in writing and shall state the reasons the relief is sought. For good cause shown, the Court may grant the motion.

RULE 2. SELECTION OF MEDIATOR

- A. SELECTION OF CERTIFIED FAMILY FINANCIAL MEDIATOR BY AGREEMENT OF THE PARTIES.** The parties may select any person by agreement or a certified family financial mediator certified pursuant to these Rules. The mediator shall be designated in the Mediated Settlement Conference Order.
- B. APPOINTMENT OF CERTIFIED FAMILY FINANCIAL MEDIATOR BY THE COURT.** If the parties cannot agree upon the selection of a mediator or do not timely return the Mediated Settlement Conference form to the Trial Court Coordinator, the Court shall appoint a mediator. The attorneys for the parties shall have a full and frank discussion in good faith concerning the selection of a mediator before advising the Court that they cannot agree upon the selection of a mediator.

The general procedure for judicial appointment shall be to appoint the next certified mediator on the appropriate list maintained at the Trial Court Coordinator's office who has agreed to accept court appointed cases in this county, is familiar with these Local Mediation Rules, and will comply with them and the Supreme Court Rules. Said list shall be updated quarterly to coincide with the release of the calendar. The Chief District Court Judge shall retain discretion to depart from the general procedure in particular circumstances such as the appointment of one mediator to multiple related cases, appointment of a newly certified mediator, or to withhold a mediator who has not followed Local or Supreme Court Rules from appointment.

- C. DISQUALIFICATION OF MEDIATOR.** Any party may move a Court of the district where the action is pending for an order disqualifying the mediator.

For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to Rule 2. Nothing in this provision shall preclude mediators from disqualifying themselves.

RULE 3. THE MEDIATED SETTLEMENT CONFERENCE.

- A. WHERE 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, the mediator shall be responsible for reserving a neutral place in the county where the action is pending 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.
- B. WHEN CONFERENCE IS TO BE HELD.** As a guiding principle, the conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date. The mediator is authorized to assist the parties in establishing a discovery schedule and completing discovery. Said conference shall be completed within 90 days after the Mediated Settlement Conference Order is entered unless said date is extended by the mediator a) for good cause, or b) by agreement of the parties, provided that no extension beyond 150 days from the entry of the order shall be allowed without court approval. The mediator shall inform the TCC of said extension.

If the parties and the mediator are unable to agree on a date and time for the conference, the mediator shall set a date and time for the conference.

- C. REQUEST TO EXTEND DEADLINE FOR COMPLETION.** A party, or the mediator, may move the Court to extend the deadline for completion of the conference by filing a motion using AOC form (AOC-CV-835) or their own motion. Such motion shall state the reasons the extension is sought and shall be served by the moving party upon the other parties, the mediator and the TCC. If any party does not consent to the motion, said party shall promptly communicate its objection to the Court.
- D. RECESSES.** 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. The mediator shall advise the TCC of the recess and time to reconvene.
- E. THE MEDIATED SETTLEMENT CONFERENCE IS NOT TO DELAY OTHER PROCEEDINGS.** 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. Specifically, the Court shall hear issues of post separation support, temporary child support, interim allocations and attorney's fees pendente lite prior to the mediation.

F. WHAT DOCUMENTS MUST BE EXCHANGED PRIOR TO CONFERENCE. At least 5 days prior to the scheduled Mediated Settlement Conference, the parties shall exchange relevant documents which shall include:

1. A verified Equitable Distribution Form (District 4 Form FFS 3) which identifies, classifies, and values the relevant assets and debts as of the date of separation, and which displays a proposed distribution of such assets.
2. In the event a party has requested an unequal division of marital property, a statement describing a) the extent to which an unequal division of marital property is requested and b) the legal grounds or factors that will be asserted to justify the unequal division.
3. A verified Financial Affidavit (District 4 Form FSS 4) which includes itemization of the party's income and expenses.
4. Any other items agreed upon by the parties.

The Equitable Distribution Form and the statement referred to in subparagraphs 1 and 2 above shall not be required if the issue of equitable distribution has not been raised.

In the event mediation is not successful, the parties shall file these documents with the Court, with any desired amendments or updates, at least 10 days before trial.

G. SANCTIONS. Failure to comply with these Rules may result in a party being prevented from entering evidence at trial that was not timely provided prior to the mediation or costs.

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) Parties.

- (b) Attorneys. At least one counsel of record for each party whose counsel has appeared in the action.
- (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.

- B. FINALIZING BY NOTARIZED AGREEMENT, CONSENT ORDER AND/OR DISMISSAL.** The essential terms of the parties' agreement shall be reduced to writing and signed by the parties. 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.

Within thirty (30) days of reaching agreement at the conference, all final agreements shall be executed by the parties and notarized, and judgments or voluntary dismissals shall be filed with the Court by such persons as the parties or the Court shall designate. In the event the parties fail to agree on the wording or terms of a final agreement or court order, the mediator may schedule another session if the mediator determines that it would assist the parties. If said additional session is scheduled, the mediator shall inform the TCC. If the final agreement or court order is not filed within the 30 days after the conference, the TCC shall set the case on for hearing at the next appropriate domestic session.

- C. PAYMENT OF MEDIATOR'S FEE.** The parties shall pay the mediator's fee as provided by Rule 7.

RULE 5. SANCTIONS FOR FAILURE TO ATTEND MEDIATED SETTLEMENT CONFERENCES.

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

A party to the action seeking sanctions shall do so in a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are being sought. The Court, on its own motion, may also impose sanctions. If the Court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law.

RULE 6. AUTHORITY AND DUTIES OF MEDIATORS.

A. AUTHORITY OF MEDIATOR.

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

B. DUTIES OF MEDIATOR.

- (1)** The mediator shall define and describe the following at the beginning of the conference:
 - (a) The process of mediation;
 - (b) The differences between mediation and other forms of conflict resolution
 - (c) The costs of the mediated settlement conference
 - (d) That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement
 - (e) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person
 - (f) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - (g) The inadmissibility of conduct and statements as provided by 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 advise all participants of 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 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 Conference.** The mediator shall report to the Court by filing with the designated TCC, using the AOC form (AOC-CV-827), **within 10 days of the completion of the conference**, whether or not an agreement was reached by the parties. 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, the person who informed the mediator that settlement had been reached, and the date and person who will present the final documents to the court.

If an agreement was reached at the conference, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the date and persons designated to file such consent judgment or dismissals. If partial agreements are reached at the conference, the report shall state what issues remain for trial. The mediator's report shall inform the Court of the absence without permission of any party or attorney from the mediated settlement conference. The Administrative Office of the Courts, in consultation with the Dispute Resolution Commission, may require the mediator to provide statistical data in the report for evaluation of the mediated settlement conference program.

Mediators who fail to report as required pursuant to this rule shall be subject to the contempt power of the court and sanctions.

- (5) **Scheduling and Holding the Conference.** The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the Court's Mediated Settlement Conference order. The mediator shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the mediator shall select a date and time for the conference. Deadlines for completion of the conference shall be strictly observed by the mediator unless changed by written order of the Court.
- (6) **Informational Brochure.** Before the conference, the mediator shall distribute to the parties or their attorneys a brochure prepared by the Dispute Resolution Commission explaining the mediated settlement conference process and the operations of the Commission.

RULE 7. COMPENSATION OF THE MEDIATOR AND SANCTIONS

- A. BY AGREEMENT.** When the mediator is selected by agreement of the parties, compensation shall be as agreed upon between the parties and the mediator.
- 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 \$125 per hour. The parties shall also pay to the mediator a one-time, per case administrative fee of \$125, which accrues upon appointment and shall be paid if the case settles prior to the mediated settlement conference or if the court approves the substitution of a mediator selected by the parties for a court appointed mediator.
- C. PAYMENT OF COMPENSATION BY 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 and payable upon completion of the conference.
- D. POSTPONEMENTS AND FEES.**
- (1)** As used herein, the term "postponement" shall mean reschedule or not proceed with a settlement conference once a date for a session of the settlement conference has been scheduled by the mediator. After a settlement conference has been scheduled for a specific date, a party may not unilaterally postpone the conference.
 - (2)** A conference session may be postponed by the mediator for good cause beyond the control of the moving participant(s) only after notice by the movant to all parties of the reasons for the postponement and a finding of good cause by the mediator.
 - (3)** Without a finding of good cause, a mediator may also postpone a scheduled conference session with the consent of all parties. A fee of \$125 may be paid to the mediator if the postponement is allowed, or if the request is within five (5) business days of the scheduled date the fee may be \$250. The postponement fee shall be paid by the party requesting the postponement unless otherwise agreed to between the parties. Postponement fees are in addition to the one time, per case administrative fee provided for in Rule 7.B.
 - (4)** If all parties select or nominate the mediator and they contract with the mediator as to compensation, the parties and the mediator may specify in their contract alternatives to the postponement fees otherwise required herein.

- F. SANCTIONS FOR FAILURE TO PAY MEDIATOR'S FEE.** Willful failure of a party to make timely payment of that party's share of the mediator's fee (whether the one time, per case administrative fee, the hourly fee for mediation services, or any postponement fee) shall constitute contempt of court and may result, following notice, in a hearing and the imposition of any and all lawful sanctions by the court.

- G. SANCTIONS FOR FAILURE TO COMPLY WITH RULES.** Failure of a party to comply with these Rules may result in sanctions.

RULE 8. AMENDMENT OF THE RULES.

The Chief District Court Judge shall retain the right to modify, delete, add or otherwise amend these rules as needed pursuant to N.C.G.S. § 7A-38.4A(c).