

OPEN FOR COMMENT UNTIL APRIL 12, 2021

MSC Rule 10(c)(6) 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 action or another civil action 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 action;
- 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 and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a conference or other settlement proceeding.

If a party required to be present, as determined in 4(a) above does not attend in person, the party shall be available through electronic means to sign the final agreement or, if the party is unable to sign through electronic means, such party is responsible for providing written verification that the party’s designee has authority to sign on the party’s behalf.

No mediator, neutral, or neutral-observer present at a settlement proceeding 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 conference or other settlement proceeding under subsection (c) of this rule. This includes proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, 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.

MSC Rule 10(c)(9)(b) Finalizing Agreement.

1. If an agreement that resolves all issues in the dispute is reached at the neutral evaluation, arbitration, or summary trial, then the parties to the agreement shall reduce the terms of the agreement to writing and sign it along with their counsel. A consent judgment or voluntary

dismissal shall be filed with the court by such persons as the parties shall designate within fourteen days of the conclusion of the proceeding or before the expiration of the deadline for its completion, whichever is later. The person responsible for filing closing documents with the court shall also sign the report to the court. The parties shall give a copy of their signed agreement, consent judgment, or voluntary dismissal to the neutral, arbitrator, or presiding officer, and all parties at the proceeding.

2. If an agreement that resolves all issues in the dispute is reached prior to the evaluation, arbitration, or summary trial, or 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 and shall file a consent judgment or voluntary dismissal disposing of all issues with the court within fourteen days of the agreement or before the expiration of the deadline for completion of the proceeding, whichever is later.

3. If a party required to be present, as determined in 4(a) above does not attend in person, the party shall be available through electronic means to sign the final agreement or, if the party is unable to sign through electronic means, such party is responsible for providing written verification that the party's designee has authority to sign on the party's behalf.

34. When an agreement is reached upon all issues in the dispute, all attorneys of record must notify the senior resident superior court judge within four business days of the settlement and advise the judge of the persons who will sign the consent judgment or voluntary dismissal.