

NORTH CAROLINA REPORTS

VOLUME 375

SUPREME COURT OF NORTH CAROLINA



14 AUGUST 2020

11 DECEMBER 2020

RALEIGH
2021

**ORDER AMENDING 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 amends Rule 4 of the Rules for Settlement Procedures in District Court Family Financial Cases.

* * *

Rule 4. Duties of Parties, Attorneys, and Other Participants in Mediated Settlement Conferences**(a) Attendance.**

- (1) **Persons Required to Attend.** 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) **Attendance Required Through the Use of Remote Technology.** Any party or person required to attend a mediated settlement conference shall attend the conference using remote technology; for example, by telephone, videoconference, or other electronic means. The conference shall conclude when an agreement is reduced to writing and signed, as provided in subsection (b) of this rule, or when an impasse is declared. Notwithstanding this remote attendance requirement, the conference may be conducted in person if:
 - a. the mediator and all parties and persons required to attend the conference agree to conduct the conference in person and to comply with all federal, state, and local safety guidelines that have been issued; or
 - b. the court, upon motion of a party and notice to the mediator and to all parties and persons required to attend the conference, so orders.
- (3) **Excusing the Attendance Requirement.** Any party or person may be excused from the requirement to attend a mediated settlement conference with the consent of 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

RULES FOR SETTLEMENT PROCEDURES
IN DISTRICT COURT FAMILY FINANCIAL CASES

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.

* * *

These amendments to the Rules for Settlement Procedures in District Court Family Financial Cases become effective on 23 November 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 17th day of November, 2020.

s/Davis, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 17th day of November, 2020.

s/Amy L. Funderburk
AMY L. FUNDERBURK
Clerk of the Supreme Court