

## **11 NCAC 23G .0109 NEUTRAL EVALUATION**

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

(b) **When Conference Is to Be Held.** The provisions applicable to the scheduling of mediated settlement conferences set forth in Rule .0103 of this Subchapter also apply to neutral evaluation proceedings.

(c) **Pre-conference Submissions.** No later than 20 days prior to the date established for the neutral evaluation conference to begin, each party may, but is not required to, furnish the evaluator with written information about the case, and shall at the same time certify to the evaluator that the party has served a copy of such summary on all other parties in the case. The information provided to the neutral evaluator and the other parties under this Rule shall be a summary of the facts and issues in the case, shall not be more than 10 pages in length, and shall include as attachments copies of any documents supporting the party's summary. Information provided to the neutral evaluator and to the other parties pursuant to this Paragraph shall not be filed with the Commission.

(d) **Replies to Pre-conference Submissions.** No later than five 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 neutral evaluator responding to the submission of an opposing party. The party's response shall not exceed five pages in length, and the party sending the response shall certify to the neutral evaluator that the party has served a copy of the response on all other parties in the case. The response shall not be filed with the Commission.

(e) **Conference Procedure.** Prior to a neutral evaluation conference, the neutral evaluator may, if he or she deems it necessary, request additional written information from any party. At the conference, the neutral evaluator 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 evaluator, the parties may agree to modify the procedures for neutral evaluation required by the Rules in this Subchapter, or the procedures may be modified by order of the Commission in the interests of justice. The modified procedures may include the presentation of submissions in writing or by telephone in lieu of physical appearance at a neutral evaluation conference, and may also include revisions to the time periods and page limitations concerning the parties' submissions.

(g) **Evaluator's Opening Statement.** At the beginning of the neutral evaluation conference, the neutral evaluator shall define and describe the following points to the parties:

- (1) the facts that:
  - (A) the conference is not a hearing,
  - (B) the neutral evaluator is not acting in the capacity of a Commissioner or Deputy Commissioner and shall not act in such capacity in the subject case at any time in the future,
  - (C) the neutral evaluator's opinions are not binding on any party, and
  - (D) the parties retain their right to a hearing if the parties do not reach a settlement;
- (2) the fact that any settlement reached will be only by mutual consent of the parties;
- (3) the process of the proceeding;
- (4) the differences between the proceeding and other forms of conflict resolution;
- (5) the costs of the proceeding;
- (6) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 and Paragraph (f) of Rule .0103 in this Subchapter; and
- (7) the duties and responsibilities of the neutral evaluator and the participants.

(h) **Oral Report to Parties by Evaluator.** In addition to the written report to the Commission required under the Rules in this Subchapter, at the conclusion of the neutral evaluation conference, the neutral evaluator shall issue an oral report to the parties advising the parties of the neutral evaluator's opinion of the case. The opinion shall include a candid assessment of liability, estimated settlement values and options, and the strengths and weaknesses of the parties' claims and defenses if the case proceeds to a hearing. The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefor. The neutral evaluator shall not reduce his or her oral report to writing and shall not inform the Commission thereof.

(i) **Report of Evaluator to Commission.** Within 10 days after the completion of the neutral evaluation conference, the neutral evaluator:

- (1) shall submit to the Dispute Resolution Coordinator a written report using a form prepared and distributed by the Commission, stating:
    - (A) when and where the conference was held,
    - (B) the names of those persons who attended the conference,
    - (C) whether or not an agreement was reached by the parties, and
    - (D) whether the issue or matter will be resolved by Commission form agreement, compromise settlement agreement, other settlement agreement, voluntary dismissal or removal from the hearing docket;
  - (2) shall identify the persons designated to file or submit for approval such agreement, or dismissal; and
  - (3) shall provide statistical data for evaluation of the settlement conference programs on forms provided by the Commission.
- (j) Evaluator's Authority to Assist Negotiations. If all parties at the neutral evaluation conference request and agree, the neutral evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement during the discussions, the neutral evaluator shall complete the neutral evaluation conference and make his or her written report to the Commission as if the settlement discussions had not occurred.
- (k) Finalizing Agreement. If the parties are able to reach an agreement before the conclusion of the neutral evaluation conference and before the evaluator provides his report to the Commission, the parties shall reduce the agreement to writing, specifying all the terms of the parties' agreement that bear on the resolution of the dispute before the Commission, and shall sign the agreement along with the parties' respective counsel. By stipulation of the parties and at their expense, the agreement may be electronically or stenographically recorded. All agreements for payment of compensation shall be submitted for Commission approval and shall be filed with the Commission within 20 days of the conclusion of the conference.
- (l) Applicability of Mediation Rules and Duties. All provisions and duties applicable to mediated settlement conferences set forth in Rule .0103 through Rule .0107 of this Subchapter, that are not in conflict with the provisions and duties of Rule .0109 of this Subchapter, apply to neutral evaluation conferences conducted under the Rules in this Subchapter.
- (m) 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 evaluator and any counsel or party on any matter related to the proceeding except with regard to administrative matters.
- (n) Adherence to Standards of Conduct for Neutrals. All neutral evaluators conducting neutral evaluation conferences pursuant to the Rules in the Subchapter shall adhere to any applicable standards of conduct that are adopted by the North Carolina Dispute Resolution Commission and are hereby incorporated by reference and include subsequent amendments and editions. A copy may be obtained at no charge from The North Carolina Court System's website, <http://www.nccourts.org/Courts/CRS/Councils/DRC/Default.asp>, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

*History Note:* Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 11 of Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 04 NCAC 10A .0616; Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000; Recodified from 04 NCAC 10G .0109 Eff. June 1, 2018.