

RULE 16. SETTLEMENT CONFERENCES IN CIVIL APPEALS

(a) Applicability.

(1) Except as provided in (a)(2), Any civil appeal in which all parties are represented by counsel and that does not involve termination of parental rights may be assigned to the settlement conference program.

(2) Unless the court otherwise orders, an appeal is not subject to this Rule if the appeal involves:

(A) Termination of parental rights, or

(B) Child custody, guardianship of minors, parenting time, visitation, or relocation of a minor.

(3) In appeals involving issues listed in (a)(2)(B), either party may file a motion to opt into the settlement conference program. Such motion must be filed within 7 days of the docketing of the appeal or the appearance of counsel for a previously unrepresented party. Any opposition must be filed within 7 days of service of the motion to opt in and must include a statement that the party believes there is no reasonable possibility of settlement. Unopposed motions filed under this Rule will be granted.

Assignment of Case to Settlement Conference Program. ~~Any civil appeal in which all parties are represented by counsel and that does not involve termination of parental rights may be assigned to the settlement conference program.~~ The settlement conference program administrator ~~shall~~ will determine whether to assign an appeal to the settlement conference program. The settlement conference ~~shall~~ will be presided over by a qualified mediator who has been appointed as a settlement judge by the Supreme Court. The parties may file a motion or stipulation to proceed with a private mediator that is hired by the parties. Any such motion must identify the mediator the parties wish to use and demonstrate that the mediator possesses the requisite qualifications to act as a mediator.

(b)

(1) **Settlement Referral Notice; Suspension of Rules.** The clerk ~~shall~~ will issue a ~~settlement referral~~ notice informing the parties that the appeal ~~will~~ may be assigned to the settlement conference program ~~and a referral notice assigning the case to a settlement judge.~~ The ~~settlement referral~~ notice automatically stays the time for filing a request for transcripts ~~under Rule 9~~ and for filing briefs ~~under Rule 31~~. The notice

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Commented [OJ1]: I noticed that in (f)(1) below it applies the shortened timeline to relocation cases also. Perhaps we should add this here and also add this to 3E?

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also stays the preparation and filing of any transcripts requested ~~under Rule 9~~. The deadline time for to filing a docketing statement is not stayed.

(1)

(2) **Assignment Notice.** Upon assignment, ~~the~~ clerk of the Supreme Court ~~shall~~ will issue an assignment notice informing the parties that a case has been assigned to the settlement conference program and ~~of identifying~~ the name of the settlement judge.

(1) —

~~(1) (3) Service. Papers or documents filed with the Supreme Court while a case is in the settlement program shall be served on all parties and the settlement judge.~~

(3) **Motion for Exemption.** Within 14 days of issuance of the referral notice, any party may file a motion for exemption from the settlement conference program. The motion shall be decided by the Supreme Court and granted upon a showing of a good faith belief that settlement is not possible or other good cause. No settlement conference shall proceed while a motion for exemption is pending.

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Commented [OJ2]: There is disagreement within the subcommittee on whether this provision should be added.

~~(c) (b) Early Case Assessment.~~ The settlement judge ~~shall~~ must conduct a pre-mediation telephone ic or video conference with counsel and file an Early Case Assessment Report within 30 days of assignment. In that report, the settlement judge ~~shall~~ must inform the court whether the case is appropriate for the program or should be removed from the program. If the settlement judge reports that the case is not appropriate for the settlement conference program, the court may remove the case from the program and reinstate the timelines for requesting transcripts ~~under Rule 9~~ and briefing ~~under Rule 31~~.

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~~(e) (d) Scheduling of Settlement Conference.~~ Unless the Supreme Court removes the case from the settlement conference program or grants an extension of time, under Rule 16(b), the settlement judge ~~shall~~ must ~~schedule~~ hold an initial settlement conference within ~~90-120~~ days of assignment. If the appeal is subject to the provisions of Rule 3E ~~ease involves child custody, visitation, relocation or guardianship issues,~~ the initial settlement conference ~~shall~~ must be ~~scheduled~~ held within ~~45~~ 60 days of assignment.

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~~(d) (e) Settlement Statement.~~

(1) Each party to the appeal ~~shall~~must submit a settlement statement directly to the settlement judge ~~within 14 days from the date of the clerk's assignment notice~~7 days prior to the settlement conference, unless otherwise directed by the settlement judge. A settlement statement ~~shall~~must not be filed with the Supreme Court, ~~and shall not be served on opposing counsel.~~Sections 1-4 shall~~must~~be served on the settlement judge and counsel for all other parties. Sections 5-9 shall~~must~~only be served on the settlement judge.

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(2) A settlement statement is limited to ~~10 pages~~4,667 words, unless otherwise directed by the settlement judge, and ~~shall~~must concisely state: (1) Relevant facts and procedural history; (2) Legal issues and arguments related to this dispute; (3) Past settlement discussions; (4) Names and representative capacities of attendees; (5) The goals and interests of the party filing the settlement statement; (6) A settlement proposal that the party believes would be fair or would be willing to make in order to conclude the matter; (7) Perceived goals and interests of the other parties; (8) Obstacles to settlement and proposals to overcoming them; (9) any other matters requested by the settlement judge or that may assist the settlement judge in conducting the settlement conference.

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Commented [OJ3]: If these changes are made, Form 10 will need to be updated.

~~(1) the relevant facts; (2) the issues on appeal; (3) the argument supporting the party's position on appeal; (4) the weakest points of the party's position on appeal; (5) a settlement proposal that the party believes would be fair or would be willing to make in order to conclude the matter; and (6) all matters which, in counsel's professional opinion, may assist the settlement judge in conducting the settlement conference.~~ Form 10 in the Appendix of Forms is a suggested form of a settlement statement.

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(f) Service. Papers or documents filed with the Supreme Court while a case is in the settlement program shall be served on all parties and the settlement judge.

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(eg) Settlement Conference. The settlement conference ~~shall~~will be held at a time and place designated by the settlement judge.

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(1) Attendance. Counsel for all parties and their clients must attend the conference. The settlement judge may, for good cause shown, excuse a

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client's attendance at the conference, provided that counsel has written authorization to resolve the case fully or has immediate telephone access to the client. Participants may request to appear by video conference within 14 days of the settlement conference, which the settlement judge may allow for good cause.

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(2) Agenda. The agenda for the settlement conference and the sequence of presentation ~~shall will~~ be at the discretion of the settlement judge. A subsequent settlement conference may be conducted by agreement of the parties or at the direction of the settlement judge.

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(3) Settlement Conference Status Reports. ~~Within 14 days from the date of any settlement conference, the~~ settlement judge ~~shall must~~ file a settlement conference status report within 3 days of any settlement conference in appeals subject to the provisions of Rule 3E and within 14 days of any settlement conference in all other appeals. The report must state the result of the settlement conference, but shall not disclose any matters discussed at the conference.

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(4) Settlement Documents. If a settlement is reached, the parties ~~shall must promptly immediately~~ execute a stipulation to dismiss the appeal and file the stipulation to dismiss with the clerk of the Supreme Court. The parties must also execute a signed settlement agreement that reduces the material terms of the settlement to writing and contains an acknowledgment that the parties have agreed to the terms. and a stipulation to dismiss the appeal, and shall file the stipulation to dismiss with the clerk of the Supreme Court. ~~The settlement agreement does not need to shall not~~ be filed with the Supreme Court.

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(h) Reinstatement of Appeal. If, after the dismissal of an appeal pursuant to the parties' settlement agreement, the district court declines or refuses to enter further orders to effectuate the settlement agreement as stipulated by the parties, any party may file a motion in the Supreme Court to have the appeal reinstated. Any such motion for reinstatement must be filed no later than 30 days after written notice of entry of the district court's decision.

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(f) Length of Time in Settlement Conference Program.

(1) Time Limits. For appeals subject to the provisions in Rule 3E, the settlement judge must file a final settlement conference status report within 120 days of assignment that indicates whether the parties were able to agree to a settlement. Within 180 days of assignment in a non-fast track case, In all other appeals the settlement judge must file a final settlement conference status report indicating whether the parties were able to agree to a settlement. For fast track cases involving child custody, visitation, relocation or guardianship issues, a final settlement conference status report must be filed within 120-180 days of assignment.

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(2) Extensions. Upon stipulation of all parties or upon the settlement judge's recommendation, the settlement program administrator may extend the time for filing a final settlement conference status report. In eases appeals subject to the provisions of Rule 3E not involving child custody, visitation, relocation or guardianship issues, the time may be extended for an additional 90-60 days. In fast track all other eases appeals involving child custody, visitation, relocation or guardianship issues, the time may be extended for an additional 60-90 days.

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(3) Reinstatement of Rules. At the discretion of the settlement program administrator, the timelines for requesting transcripts under Rule 9 and filing briefs under Rule 31 may be reinstated during any extension period granted under Rule 16(f)(2).

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(g) Sanctions. The failure of a party, or the party's counsel, to participate in good faith in the settlement conference process by not attending a scheduled conference or not complying with the procedural requirements of the program may be grounds for sanctions against the party, the party's counsel, or both. If a settlement judge believes sanctions are appropriate, the settlement judge may file a settlement conference status report recommending the sanction to be imposed and describing the conduct warranting that sanction. Sanctions include, but are not limited to, payment of attorney's fees and costs of the opposing party, dismissal of the appeal, or reversal of the judgment below.

(h) Confidentiality. All parties must sign a confidentiality agreement prior to commencement of the settlement conference. Papers or documents prepared by counsel or a settlement judge in furtherance of a settlement conference, excluding the settlement conference status report and stipulation or motion to dismiss appeal, shall not be available for public inspection or submitted to or considered by the Supreme Court or Court of Appeals. Aside from the terms of a settlement reached, Mmatters discussed at the settlement conference and

papers or documents prepared under this rule shall not be admissible in evidence in any judicial proceeding and shall not be subject to discovery.

(gk) Sanctions. The failure of a party, or the party's counsel, to participate in good faith in the settlement conference process by not attending a scheduled conference or not complying with the procedural requirements of the program may be grounds for sanctions against the party, the party's counsel, or both. If a settlement judge believes sanctions are appropriate, the settlement judge may file a settlement conference status report recommending the sanction to be imposed and describing the conduct warranting that sanction. Sanctions include, but are not limited to, payment of attorney's fees and costs of the opposing party, dismissal of the appeal, or reversal of the judgment below.

Comments: Section (a) is added to set forth the applicability of the rule. The changes substantively modify the rule by adding appeals subject to the provisions of Rule 3E to the list of appeals that are exempt from the settlement program and by including a provision that allows the parties in Rule 3E appeals to opt into the settlement program. Section (a) is re-lettered to (b) and minor edits were made to make the referral and assignment process distinct. This section is also substantively modified to allow parties to hire a private mediator for the settlement proceedings and a new section was added that will allow parties to file a motion to be exempted from the settlement program. The subsection on Service was moved from this section and placed as its own section (f). Section (c) was re-lettered to (d) and was substantively modified to reduce the time for the settlement judge to hold the initial settlement conference in appeals subject to the provisions of Rule 3E and increase the time to hold the initial settlement conference in all other appeals. Section (d) was re-lettered to (e) and is substantively modified by changing the time for filing the settlement statement and the questions that need to be answered, and by adding a requirement that questions 1-4 of the settlement statement must be served on all parties. Section (e) was re-lettered to (g) and the subsections include substantive changes that: in (1) allow the parties to appear at the settlement conference by video; in (3) reduces to 3 days the time for filing the settlement conference status report in appeals subject the provisions of NRAP 3E; and in (4) adds a requirement that the parties must execute a signed settlement agreement that reduces the material terms of the agreement to writing and contains an acknowledgment that the parties have agreed to those terms. Section (h) is added and substantively modifies the Rule by allowing the parties to seek reinstatement of the appeal if the district court declines or refuses to enter orders to effectuate the parties' settlement agreement. Section (f) is re-lettered to (i) and the changes to this section are not intended to be

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substantive. Section (h) is re-lettered to (j) and adds a sentence requiring all parties to sign a confidentiality agreement prior to commencement of the settlement conference. The section is also modified to include the stipulation or motion to dismiss the appeal as a document that is available for public inspection. This section is also substantively modified to allow the terms of any settlement reached in this program to be subject to discovery and admissible in judicial proceedings. Section (g) is re-lettered to (k).