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Rule 101 Alternative Dispute Resolution (ADR)

(a) Purpose of ADR Rules.

These rules (Local Civil Rules 101-101.3) 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. In the case of binding summary trial, these rules also provide, by agreement, an alternative means of obtaining a final determination on the merits. Nothing in these rules 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. The rules are not intended to force settlement upon any party. The rules shall be construed to secure the just, speedy, and inexpensive resolution of controversies while preserving the right of all parties to a conventional trial where the parties have not agreed that the outcome of the ADR procedure will be the final determination in the case. The rules are subject to and do not limit the plenary, discretionary authority of the presiding judge over all aspects of alternative dispute resolution procedures in cases before the judge, including whether to use any alternative dispute resolution procedure, the type of procedure used, and the sequence, timing, and other requirements governing any procedure used. The presiding judge may vary from the provisions of these rules in his or her discretion.

(b) Specific ADR Procedures.

These rules provide expressly for mediated settlement conferences (Local Civil Rules 101.1-101.1f), court-hosted settlement conferences (Local Civil Rule 101.2), and summary trials, both jury and non-jury (Local Civil Rules 101.3-101.3b). Express provision for these procedures is not intended to exclude the use of other alternative dispute resolution procedures, as appropriate, that may be suggested by the parties or the court. In all cases, the rules provide the parties the opportunity to present to the court their respective positions, if they choose to do so, regarding the type of alternative dispute resolution procedures to be used and the sequence and timing of such procedures. Absent contrary order, in cases selected for mediation, the rules mandate mediation during the discovery period and, if settlement is not achieved, permit a court-hosted settlement conference after discovery and the ruling on any motions for summary judgment. Summary trial, whether jury or non-jury or binding or non-binding, may be used in lieu of or in addition to other alternative dispute resolution procedures, as appropriate. In determining the type of

alternative dispute resolution procedure to be used, and the sequence and timing of such procedures, due consideration will be given to the preferences of the parties, the nature of the case, judicial efficiency, and other considerations relevant under the circumstances presented. The court shall determine in its discretion the type of alternative dispute resolution procedure to be used, if any, and the sequence, timing, and other requirements governing any procedures used, giving such consideration as it deems appropriate to the preferences of the parties, the nature of the case, judicial efficiency, and other considerations it deems relevant under the circumstances presented.

Rule 101.1 Mediated Settlement Conferences

Local Civil Rules 101.1-101.1f govern reference of selected civil actions for mediated settlement conferences. Their purpose is to provide for an informal process conducted by a mediator with the objective of helping the parties reach a mutually acceptable settlement of their dispute.

Rule 101.1a Selection of Cases for Mediated Settlement Conferences

(a) Mediated Settlement Conferences During Discovery

In selected civil cases (see section (b) for a description of cases automatically selected for mediation) there shall be conducted a mediated settlement conference in accordance with Local Civil Rules 101.1a-f. The conference may be set for any time during the discovery period, as agreed by the parties. In appropriate cases, the parties may wish to schedule the mediation early in the discovery period, after a first round of depositions or other discovery. In other cases, the parties may choose to set the conference near the end of the discovery period after all, or substantially all, discovery is complete.

(b) Automatic Selection by these Rules.

Several categories of civil cases are automatically selected for mediated settlement conferences, without specific order by the court. These categories include, according to the nature of suit designations made in opening the case in CM/ECF or as listed within the court forms appearing at www.nced.uscourts.gov, (1) contract [categories 110-140 and 160-195, specifically excluding 150-153], (2) tort [all categories, 310-385], (3) civil rights [all categories, 440-446], (4) labor [all categories, 710-791], (5)

property rights [all categories, 820-840], (6) antitrust [category 410], (7) banks and banking [category 430], (8) securities/commodities/exchange [category 850], (9) environmental matters [category 893](10) consumer credit [category 480], and (11) cable/sat TV [category 490]. The parties to these actions shall discuss mediation plans at the Fed. R. Civ. P. 26(f) meeting of the parties and report such plans in their Rule 26(f) Report in preparation for the entry of an initial pretrial order. Cases wherein the United States is a party or any party appears pro se are not included within this automatic selection for mediation.

(c) Discretionary Selection by the Court.

In its discretion, the court may order a mediated settlement conference in any action not automatically selected under section (b) above. After entry of such an order, the parties shall have twenty-one (21) days to file a statement identifying an agreed-upon mediator.

(d) Stipulated Selection by the Parties.

In any case where selection for a mediated settlement conference is not automatic under section (b) of this rule, the parties may file a stipulation for mediation. In such stipulation, the parties may state any agreements they have reached regarding the identity of the mediator, the timing of the conference, and any modification of the procedures described by these rules.

(e) Exemption from Mediation and Use of Other ADR Proceedings.

Any party, or parties jointly, may file a motion for exemption from mediation. Such a motion will be granted or denied in the court's discretion. A general assertion that a case is not likely to settle or that settlement possibilities are remote may not in the court's discretion adequately justify exemption. If the moving party or parties seek another form of alternative dispute resolution in lieu of mediation, such as summary trial or court-hosted settlement conference, the motion for exemption shall include a request for such a proceeding.

Rule 101.1b Mediators

(a) Court Certification.

(1) The clerk shall maintain and make available on the court's website a list of court-certified mediators who meet the requirements for certification under subsection (2). The list shall identify areas of subject matter expertise of each mediator according to the categories identified in Local Civil Rule 101.1a(b) and include the curriculum vitae submitted by the mediator to the court.

(2) Attorneys who agree to serve under these rules, have been certified as mediators by the North Carolina Dispute Resolution Commission, and who have at least eight (8) years of civil trial practice or membership on the faculty of an accredited law school may be appointed to the court's list of certified mediators. Further, attorneys who were on the court's list of certified mediators as of November 1, 2007 shall remain on the list. A person seeking appointment to the list shall submit to the clerk a curriculum vitae and such other information as is necessary to show his or her compliance with the requirements for appointment.

(3) Appointment to the list does not guarantee any mediator that he or she will be appointed to serve in any case before the court.

(4) A certified mediator shall notify the clerk within thirty (30) days of any change in address or other contact information previously provided to the clerk and shall notify the clerk promptly if he or she no longer wishes to remain on the court's list of certified mediators.

(b) Compensation of Mediators.

A mediator serving under these rules shall be compensated and reimbursed at the terms agreed upon by the parties. In the absence of an agreement, the mediator shall be compensated by the parties as provided in this section at the hourly rate set by the clerk. The parties shall make payment directly to the mediator at the termination of the mediated settlement conference, whether or not the case is settled. The mediator shall be compensated for up to two (2) hours of preparation time, the time expended in the conference, and a reasonable amount of time lost and costs incurred due to untimely action by a party or person required to attend that results in postponement of the conference. The only

compensable expense of the mediator is travel mileage at the ordinary government rate. The mediator's fee and travel expense shall be paid in one equal share by the plaintiff (or plaintiffs), one equal share by the defendant (or defendants), and one equal share by any third party (or parties), unless, as indicated, otherwise agreed by all parties or ordered by the court in the interest of fairness.

(c) Compensation of Mediators when a Party is Unable to Pay.

If a party contends it is unable to pay its share of the mediator's fee, that party shall, before the conference, file a motion with the court to be relieved of the obligation to pay. The motion shall be accompanied by an affidavit of financial standing. The mediated settlement conference should proceed without payment by the moving party, and the court will rule on the motion upon completion of the case. The court will take into consideration the outcome of the case, whether by settlement or judgment, and may relieve the party of its obligation to pay the mediator if payment would cause a substantial financial hardship. If the party is relieved of its obligation, the mediator shall remain uncompensated as to that portion of his or her fee, a circumstance that reflects the mediator's duty of pro bono service.

Rule 101.1c Selection of the Mediator

(a) Selection by Agreement.

The parties are encouraged to select their own mediator by agreement. If, within twenty-one (21) days of the initial pretrial order, the parties file with the clerk a statement identifying an agreed-upon mediator, such statement shall be effective to select the mediator. The parties shall certify in the statement that the mediator has agreed to his or her selection and shall serve a copy of the statement on the mediator at the time it is filed. Notwithstanding the requirements for appointment to the court's list of certified mediators in Local Civil Rule 101.1b(a)(2), the parties may select an agreed-upon mediator who is not on the clerk's list of certified mediators and is not certified by the North Carolina Dispute Resolution Commission. An agreed-upon mediator who is not on the clerk's list of certified mediators must, prior to service, agree to be bound by all provisions of these rules, including submission to the jurisdiction of this court for disciplinary purposes, and, if not certified by the North Carolina Dispute Resolution Commission, to be bound by the North Carolina Standards of Professional Conduct for Mediators. Such a mediator shall

be deemed to have given the required agreement by undertaking any action as mediator in the case to which he or she has been assigned.

(b) Selection by the Clerk.

If no timely statement pursuant to section (a) of this rule is filed, the clerk shall appoint a mediator from the certified list. The appointment is within the discretion of the clerk, who may consider subject matter expertise in making the appointment. The clerk shall give notice of the appointment to the mediator and the parties.

(c) Disqualification.

On motion made to the court not later than twenty (21) days before a scheduled mediated settlement conference, a mediator may be disqualified by the court for bias or prejudice as provided in 28 U.S.C. § 144. Further, a mediator shall disqualify himself or herself if the mediator could be required to do so under 28 U.S.C. § 455 if he or she were a justice, judge, or magistrate judge or under the North Carolina Standards of Professional Conduct for Mediators.

(d) Copies of the Pleadings.

On request of the mediator, the clerk shall furnish to the mediator a copy of the complaint, answer, and any third-party pleadings in the action.

Rule 101.1d Procedures for Mediated Settlement Conferences

(a) Time Period for the Mediated Settlement Conference.

The mediated settlement conference shall be held during the discovery period unless the court specifically orders otherwise.

(b) Scheduling the Mediated Settlement Conference.

The mediated settlement conference shall ordinarily be held in the office of the mediator, but may be held at any other place agreed to by the parties and the mediator. Because of space limitations, the federal courthouses are not available for mediated settlement conferences. After conferring with the attorneys for the parties regarding scheduling matters, the mediator shall determine the place and time of the conference (within the period established by these rules), and give notice to the parties. The mediator

may postpone the conference by agreement of all parties and persons required to attend and the mediator, but only to a date within the period for the conference established by these rules.

(c) Submission of Position Papers to Mediator.

No later than seven (7) days before the scheduled date of the mediated settlement conference, any party may submit a confidential position paper to the mediator. The position paper and any exhibits shall be subject to such limits on length, if any, as the mediator imposes. Position papers are confidential, shall be held so by the mediator, and need not be served on other parties. The purpose of these submissions is to help the mediator become familiar with the assertions of the parties, and the parties may agree to the submission of additional information if they believe the information will facilitate the mediated settlement conference.

(d) Duties of Parties, Representatives, and Attorneys.

(1) The following persons shall be physically present at the entire mediated settlement conference:

(i) Individual parties; an officer, manager, or director of a corporate or entity party, such representative to have full authority to negotiate on behalf of the entity and to approve or, when permitted pursuant to subsection (2) hereof, to recommend a settlement;

(ii) At least one (1) attorney of record for each represented party; and

(iii) A representative of the insurance carrier for any party against whom a claim is made. The representative must have full authority to settle the claim and must be a person other than the carrier's outside counsel.

(2) Any such party or person may have the attendance requirement excused or modified, including the allowance of that party's or person's participation without physical attendance:

(i) By agreement of all parties and persons required to attend and the mediator; or

(ii) By order of the court, upon motion of a party and notice to the all parties and persons required to attend and the mediator.

(3) Upon reaching a settlement agreement at a mediated settlement conference, the parties shall reduce the agreement to writing and prepare a stipulation of dismissal or consent judgment for presentation to the court within two weeks after completion of the conference unless a different deadline is agreed to by the parties or established by the court.

(e) Authority of the Mediator.

The mediator is authorized by these rules to exercise control over the mediated settlement conference and to direct all proceedings therein. The mediator is specifically authorized to meet or consult privately with any party or their counsel before, during, or after the conference. The mediator may report in writing to the court, with copies to the parties, any conduct of any party that may be in violation of these rules for mediated settlement conferences.

(f) Duties of the Mediator.

At the beginning of the mediated settlement conference, the mediator shall describe the following matters to the parties:

(1) The process of mediation;

(2) The differences between mediation and other forms of conflict resolution;

(3) The costs of the mediated settlement conference;

(4) The fact 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;

(5) The circumstances under which the mediator may meet alone with either of the parties or any other person;

(6) The conditions under which communications with the mediator will be held in confidence during the conference;

(7) The inadmissibility of negotiating statements and offers at trial;

(8) The fact that the court will not permit parties in other litigations to conduct discovery regarding the mediation in this case;

(9) The duties and responsibilities of the mediator and the parties; and

(10) The fact that any agreement reached will be reached by mutual consent of the parties. The mediator may recess or suspend the conference at any time and set a schedule for reconvening it within the period for the conference established by these rules. It is the duty of the mediator to determine if an impasse has been reached or mediation should for any reason be terminated. The mediator shall then inform the parties that mediation is terminated.

(g) Agreement to Modify Mediation Procedures.

By agreement filed with the court, the parties, with the consent of the mediator, may modify the mediation procedures described in these rules, except that the parties may not alter time limitations set by these rules or order of the court.

(h) Sanctions for Failure to Appear and Misconduct.

If a person fails to attend a mediated settlement conference without good cause or engages in misconduct during or otherwise in connection with a mediated settlement conference, the court may impose on that person (and any associated party) any sanction authorized by Fed. R. Civ. P. 37(b) and any other lawful sanction, including, but not limited to, the imposing of the cost of attorney's fees, mediator's fees, and expenses of persons incurred in attending the conference.

(i) Immunity.

A mediator appointed by the court pursuant to these rules shall have judicial immunity in the same manner and to the same extent as a judge of this court, except that the mediator may be disciplined (1) by the court, after being provided an opportunity to be heard, for violation of these rules or the North Carolina Standards of Professional Conduct for Mediators and (2) by the State Bar or any agency established to enforce standards of conduct for mediators.

(j) Inadmissibility of Negotiations.

(1) Evidence of statements made and conduct occurring in a mediated settlement conference, whether attributable to a party, the mediator, or a neutral observer present at the conference (e.g., mediator candidate, interpreter, person studying dispute resolution), shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(i) In proceedings for sanctions under these rules;

(ii) In proceedings to enforce or rescind a settlement of the action; or

(iii) In disciplinary proceedings before the court, the North Carolina State Bar, or any agency established to enforce standards of conduct for mediators.

(2) No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference.

(3) No mediator or neutral observer present at a mediated settlement conference shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under these rules, and disciplinary proceedings before this court, the State Bar, or an agency established to enforce standards of conduct for mediators.

Rule 101.1e Completion of the Mediated Settlement Conference

When the mediated settlement conference is completed, the mediator shall within seven (7) days after completion submit to the clerk a report of the status of the case, on a form supplied by the clerk. If the case is resolved, it is the duty of the parties to file a stipulation of dismissal or consent judgment. If the case is not resolved, it proceeds without further order of the court in accordance with the Local Civil Rules of the court.

Rule 101.1f Evaluation of the Mediation Program

The mediation program established by these rules will be periodically reviewed by the court. For purposes of evaluation of the program, the mediator, the attorneys, and the litigants may be requested to complete confidential evaluation reports at the completion of the mediation. These reports shall be kept confidential by the clerk and shall be maintained in a file separate and apart from the case file. The clerk shall compile information from the evaluation reports to assist the court in determining the effectiveness of the mediation program.

Rule 101.2 Court-Hosted Settlement Conferences

(a) Selection of Cases for Court-Hosted Settlement Conference.

The court, upon its own initiative or at the request of any party, may order a settlement conference, conducted by a district judge, magistrate judge, bankruptcy judge, or other federal judicial officer, at a time and place to be fixed by the court. Upon request by all parties to an action, the court shall order a court-hosted settlement conference.

(b) Time Period for the Court-Hosted Settlement Conference.

The court-hosted settlement conference shall be held after the discovery period and the ruling resolving any motions for summary judgment unless the court specifically orders otherwise.

(c) Presiding Judicial Official.

A judicial officer other than the judge assigned to the case will ordinarily preside at a court-hosted settlement conference.

(d) Attendance at the Court-Hosted Settlement Conference.

(1) The following persons shall be physically present at the entire court-hosted settlement conference:

(i) Individual parties; an officer, manager, or director of a corporate or entity party, such representative to have full authority to negotiate on behalf of the entity and to approve or, when permitted pursuant to subsection (2) hereof, to recommend a settlement;

(ii) At least one (1) attorney of record for each represented party; and

(iii) A representative of the insurance carrier for any party against whom a claim is made. The representative must have full authority to settle the claim and must be a person other than the carrier's outside counsel.

(2) Any such party or person may have the attendance requirement excused or modified, including the allowance of that party's or person's participation without physical attendance, by order of the judicial officer presiding over the conference, upon motion of a party and notice to all the parties and persons required to attend.

(e) Conduct of the Court-Hosted Settlement Conference.

The parties, representatives, and attorneys are encouraged to be completely candid with the judicial officer presiding over the conference so that he or she may properly guide settlement discussions. The judicial officer presiding over the conference may make such other and additional requirements of the parties and conduct the proceedings as he or she deems proper to expedite settlement of the case. The judicial officer presiding over the conference will not discuss the substance of the conference with anyone, including the judge to whom the case is assigned, and may excuse the parties or the attorneys from the conference any time. During the settlement conference, and, as appropriate, before and after the conference, the judicial officer presiding over it also may confer ex parte with any parties, representatives or attorneys, meet jointly or individually with the parties and/or representatives without the presence of counsel, and elect to have the parties and/or representatives meet alone without the presence of the judicial officer or counsel, all with the specific understanding that any conversation relative to settlement will not constitute an admission and will not be used in any form in the litigation or in the event of trial.

Rule 101.3 Summary Trials

Summary trial is an ADR procedure consisting of a streamlined trial of a case. The outcome of the summary trial may be non-binding or, if the parties agree, binding. These rules provide for a summary trial before a jury (Local Civil Rule 101.3a) or the bench (Local Civil Rule 101.3b). The procedure used at the summary trial may be adjusted to meet the needs of the particular case.

Therefore, while these rules set forth detailed procedures for summary jury trials, the judge presiding over the trial may modify or disregard any of these procedures, and, in consultation with counsel, fashion alternatives deemed better suited to the case. Similarly, the procedures for summary jury trial may serve as a guide to the procedures for a summary bench trial. Summary trial may be used in lieu of other alternative dispute resolution procedures or in addition to them, such as an alternative to impassing a mediation.

Rule 101.3a Summary Jury Trials

(a) Eligible Cases.

The assigned judge may, after consultation with counsel, refer for summary jury trial any civil case in which jury trial has been properly demanded. Either or both parties may move the court to order summary jury trial; however, the court will not require a party to participate against its will.

(b) Selection of Cases.

Cases selected for non-binding summary jury trial should be those in which counsel agree that a non-binding verdict by the jury could be helpful in a subsequent settlement negotiation. Since an investment of time by counsel and by the court is necessary for the procedure, summary jury trial should ordinarily be used only in those cases that would take more than seven (7) trial days to try.

(c) Procedural Considerations.

Summary jury trial is a flexible ADR process. The procedures to be followed should be determined by the assigned judge in advance of the scheduled summary jury trial date, in light of the circumstances of the case and after consultation with counsel. The following matters should be considered by the assigned judge and counsel in structuring a summary jury trial.

(1) Presiding Judge.

Either a district judge or a magistrate judge may preside over a summary jury trial, provided that a magistrate judge may preside over a binding summary jury trial only with the consent of all the

parties. During a non-binding summary jury trial, the presiding judge will ordinarily participate in on-going settlement negotiations and may have ex parte conferences with each side. For this reason, normally a judge other than the trial judge will be selected to preside over a non-binding summary jury trial.

(2) Submission of Written Materials.

Counsel must submit proposed jury voir dire questions, jury instructions, and briefs on any novel issues of law within seven (7) days before the date set for the summary jury trial. In addition, counsel may also choose to submit other items, such as a statement of the case, stipulations, and exhibit lists.

(3) Attendance.

Non-binding summary jury trials are effective in promoting settlement because, among other reasons, they give parties their "day in court" (meeting a need to voice their position in a public forum), and because they allow parties to see the merits of their opponent's position. It is therefore critical that the parties and all other persons or entities involved in the settlement decision attend a non-binding summary jury trial. This includes all individual parties and representatives of corporations and other parties and insurers vested with full settlement authority. Since absence of any decision maker makes the process less likely to proceed, this attendance requirement can be waived only by order of the court.

(4) Size of Jury Panel.

The jury shall consist of six (6) to twelve (12) members.

(5) Voir dire.

Each counsel may exercise a maximum of two (2) peremptory challenges. There will be no alternate jurors. Counsel will be assisted in the exercise of challenges by a brief voir dire examination to be conducted by the court.

(6) Transcript or Recording.

Upon consent of the parties, counsel may arrange for the proceedings to be recorded by a court reporter at his or her own expense. However, no transcript of the proceedings will be admitted in evidence at any subsequent trial unless the evidence would be otherwise admissible under the Federal Rules of Evidence.

(7) Conference Between Counsel.

Prior to trial, counsel are to confer with regard to the use of physical exhibits, including documents and reports, and reach such agreement as is possible. Prior to the day of the summary jury trial, the court will hear all matters in dispute and make appropriate rulings.

(8) Timing.

The summary jury trial should take no more than one-and-one-half (1½) days from jury selection to jury deliberation. In consultation with counsel before the summary jury trial, the court shall establish a scheme of time allotment for presentations by counsel.

(9) Case Presentations.

The attorney presentations shall be organized in the manner of a typical trial, except that no witness testimony will be allowed, absent the court's permission. First, the plaintiff shall present an opening statement, followed immediately by defendant's opening statement. Next, plaintiff and defendant shall present their cases-in-chief by informing the jury in more detail than the opening statement who the witnesses are and what their testimony will be. Finally, the plaintiff and then defendant will make closing arguments to the jury. Plaintiff may present a final rebuttal if his or her presentation time limit has not expired. The parties are free to divide their allotted time among the three trial segments as they see fit.

(10) Manner of Presentation.

All evidence shall be presented through the attorneys for the parties. The attorneys may summarize and comment on the evidence and may summarize or quote directly from depositions, interrogatories, requests for admissions, documentary evidence, and sworn statements of potential witnesses; however, no witness' testimony may be referred to unless the reference is based upon one of the products of the various discovery procedures, or upon a written, sworn statement of the witness, or upon sworn affidavits of counsel that the witness would be called at trial and will not sign an affidavit, and that counsel has been told the substance of the witness' proposed testimony by the witness. Demonstrative evidence, such as videotapes, charts, diagrams, and models may be used unless the court finds, on objection, that this evidence is neither admissible nor accurately reflects evidence which is admissible.

(11) Objections.

Formal objections are discouraged. Nevertheless, in the event counsel makes a representation not supported by admissible evidence, an objection will be entertained. If such an objection is sustained, the jury will be instructed appropriately.

(12) Jury Instructions.

Jury instructions will be given in an abbreviated form, adapted to reflect the nature of the proceeding. The jury will be instructed to return a unanimous verdict, if possible. Barring unanimity, the jury may be instructed to submit a statement of each juror's findings.

(13) Jury Deliberations.

Jury deliberations should be limited in time.

(14) Settlement Negotiations.

While the summary jury in non-binding summary trials is deliberating, the presiding judge should direct the parties to meet

and explore settlement possibilities. The judge may participate in this process.

(15) Continuances.

The proceedings may not be continued or delayed other than for short recesses at the discretion of the court.

(16) Finality of Determination.

Although ordinarily non-binding in nature, counsel may stipulate among themselves that a consensus verdict by the summary jury will be a final determination on the merits of the case and judgment may be entered thereon by the court. In addition, counsel may stipulate to any other use of the verdict that will aid in resolution of the case. For example, the parties should consider a bracketed settlement with specific minimum and maximum settlement amounts and being bound by the summary jury's verdict within the brackets.

(17) Trial.

If a non-binding summary jury trial does not result in settlement of the case, it should proceed to trial on the scheduled date.

(18) Limitation on Admission of Evidence.

The assigned judge shall not admit at a subsequent trial any evidence that there has been a non-binding summary jury trial, the nature or amount of any verdict, or any other matter concerning the conduct of the summary jury trial or negotiations related to it, unless:

(a) The evidence would otherwise be admissible under the Federal Rules of Evidence; or

(b) The parties have otherwise stipulated.

Rule 101.3b Summary Non-Jury Trials

The assigned judge may, after consultation with counsel, refer any civil case for summary non-jury trial. Either or both parties may move the court to order summary non-jury trial; however, the court will not require a party to participate against its will. The decision resulting from a non-jury summary trial may be non-binding or, upon consent of the parties, a final determination on the merits upon which judgment shall be entered. The procedure for a summary non-jury trial shall be directed by the court on a case-by-case basis after consultation with counsel. The procedures for summary jury trials may be used, as appropriate, as a guide for procedures in summary bench trials.