

OPEN FOR COMMENT UNTIL APRIL 15, 2025



ADVISORY OPINION OF THE THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

DRAFT Advisory Opinion No. 46 (2025)

(Adopted and Issued by the Commission on xxxxxxxx, 2025)

Electric Signatures Under the Uniform Electronic Transactions Act in a Final Settlement Agreement, Rule 4

An electronic signature must be valid under the Uniform Electronic Transactions Act to create a final written agreement for settlement purposes in a court ordered mediation under the Dispute Resolution Commission Rules.

Concern Raised

When conducting a mediation with one or more parties attending through the use of remote technology, what constitutes a valid electronic signature under the Uniform Electronic Transactions Act (UETA)?

Advisory Opinion

Does an email, that contains a signature block by an attorney for a party to a mediation, that contemplates a future agreement to be signed by the parties constitute a settlement of the issues by final agreement?

No.

The email is a promise to agree to future terms, or an agreement to agree. In *Garland v. Orange County*, No. COA23-588, the NC Court of Appeals held:

Even assuming *arguendo* that this email would have been sufficient to support a contract formation, it does not comply with statutory requirements for mediated settlement agreements. North Carolina statute requires that “[n]o settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection . . . shall be enforceable unless it has been reduced to writing and signed by the parties against whom enforcement is sought or signed by their designees.” N.C.G.S. § 7A-38.1(l). Thus, in order for the email in this case to be enforceable, the statute requires it to be signed by defendant or defendant’s

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designees. Defendant's trial counsel included his name below the body of the email, a common practice in email correspondence. Plaintiff argues this constitutes a signature under the Uniform Electronic Transactions Act ("UETA"), which requires that the involved parties have agreed, based on the context and surrounding circumstances, to conduct a transaction by electronic means. N.C.G.S. § 66-315(b). Here, given defendant's counsel's provision within the email that he would send a future draft of the agreement for signature, it is clear that defendant did not intend to execute the settlement agreement via an email electronic signature. Thus, UETA does not apply.

The UETA was adopted by the NC General Assembly on June 30, 2000, NCGS § 66-311 et. seq. The statute applies to electronic records and signatures when conducting transactions. NCGS § 66-314 applies "to any electronic record or electronic signature created, generated, sent, communicated, received or stored." All parties must agree to the use of electronic signatures for the UETA to apply. The UETA requires the following three elements to constitute a valid electronic signature: the signature must be a sound, symbol, or process; that is attached to, or logically associated with a record; that is executed or adopted by a person with the intent to sign the record. NCGS § 66-317 provides an electronic signature shall be legally recognized and a signature may not be denied legal effect or enforceability solely because it is in electronic form. So long as the electronic signature complies with the UETA, the electronic signature will satisfy the law requiring a signature.

Another opinion by the Court of Appeals *Glenwood v. Glenwood*, No. COA22-943, rejected the argument that a signature block on an e-mail constitutes binding acceptance of what is being transmitted between two parties in email communications.

Mediation settlement conferences that are conducted under the Dispute Resolution Commission's (DRC) jurisdiction may occur using remote technology. The increased number of remote conferences brings multiple questions of how best to have the parties execute the settlement agreement at the end of the mediation. Below are some procedures a mediator may use to collect signatures for a final agreement.

1. The use of electronic signature under the UETA. The mediator should confirm all parties are willing to use electronic signatures and confirm the application that will provide the signatures electronically. For example, Adobe, Word, DocuSign, etc. Once all signatures have been confirmed, the mediator may report the case as settled.
2. The mediator may recess and reconvene the mediation, allowing time to circulate the final agreement for wet signatures by all parties. Once the document has been signed by all parties, or their designee, the mediator may report the case as settled.
3. The mediator may allow the parties to agree to use hybrid signatures, where a party may sign electronically, and the opposing party may sign in ink. Here, the mediator may recess the conference until all signatures can be obtained. Once the mediator has confirmed all parties have signed the final agreement, they can file the Report of Mediator and indicate the case has settled.

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This AO applies to the following Dispute Resolution Commission court-ordered mediation programs, and other programs that follow the Commission's mediation rules: Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions (MSC) under NCGS § 7A-38.1(l); Settlement Procedures in District Court Family Financial Cases (FFS) under NCGS § 7A-38.4A(j); Mediation for Matters Before the Clerk of Superior Court under NCGS § 7A-38.3B(i); and Mediation for Farm Nuisance Disputes under NCGS § 7A-38.3(e).