

IN THE SUPREME COURT OF NORTH CAROLINA

ORDER AMENDING THE RULES FOR MEDIATED
SETTLEMENT CONFERENCES AND OTHER SETTLEMENT
PROCEDURES IN SUPERIOR COURT CIVIL ACTIONS

Pursuant to subsection 7A-38.1(c) of the General Statutes of North Carolina, the Court hereby amends the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions. This order affects Rules 2, 4, 7, 8, and 10.

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Rule 2. Designation of the Mediator

(a) **Designation of a Mediator by Agreement of the Parties.** ~~Within twenty-one days of the court's order, the parties may, by~~ By agreement, the parties may designate a mediator ~~who is~~ certified under these rules. ~~A Designation of Mediator in Superior Court Civil Action~~ by filing a Designation of Mediator by Agreement of Parties in Superior Court Civil Action and Order of Appointment, Form AOC-CV-812 (Designation Form), ~~must be filed with the court within twenty-one days of the court's order~~ requesting that the senior resident superior court judge approve the designation. ~~The Designation Form shall be filed within twenty-one days of the court's order.~~ The plaintiff or plaintiff's attorney should file the Designation Form; however, any party may file the Designation Form. The party filing the Designation Form shall serve a copy on all parties and the mediator designated to conduct the mediated settlement conference. The Designation Form shall state: (i) the name, e-mail address, address, and telephone number of the mediator; (ii) the rate of compensation of the mediator; (iii) that the mediator and opposing counsel have agreed upon the designation and rate of compensation; and (iv) that the mediator is certified under these rules.

(b) **Appointment of a Mediator by the Court.** If the parties cannot agree on the designation of a mediator, then the plaintiff or the plaintiff's attorney shall notify the court by filing an ~~Designation Form~~ Appointment of Mediator by Court Order in Superior Court Civil Action, Form AOC-CV-840 (Mediator Appointment Form), requesting, ~~on behalf of the parties~~, that the senior resident superior court judge appoint a mediator. The ~~Designation~~ Mediator Appointment Form ~~must~~ shall be filed within twenty-one days of the court's order and shall state that ~~the attorneys for~~ the parties have discussed the designation of a mediator and have been unable to agree.

Upon receipt of a ~~Designation~~ Mediator Appointment Form ~~requesting the appointment of a mediator~~, or in the event that the parties fail to file a Designation Form or a Mediator Appointment Form with the court within twenty-one days of the court's order, the senior resident superior court judge shall appoint a mediator certified under these rules who has expressed a willingness to mediate actions within the senior resident superior court judge's district.

In appointing a mediator, the senior resident superior court judge shall rotate through a list of available certified mediators. Appointments shall be made without regard to race, gender, religious affiliation, or whether the mediator is a licensed attorney. The senior resident superior court judge shall retain discretion to depart from a strict rotation of mediators when, in the judge's discretion, there is good cause in a case to do so.

As part of the application or annual certification renewal process, all mediators shall designate the judicial districts in which they are willing to accept court appointments. Each designation is a representation that the designating mediator has read and will abide by the local rules for, and will accept appointments from, the designated district and will not charge for travel time and expenses incurred in carrying out his or her duties associated with those appointments. A mediator's refusal to accept an appointment in a judicial district designated by the mediator may be grounds for removal from the district's appointment list by the Dispute Resolution Commission (Commission) or the senior resident superior court judge.

The Commission shall provide the senior resident superior court judge of each judicial district a list of certified superior court mediators requesting appointments in that district. The list shall contain each mediator's name, address, and telephone number. The list shall be available on the Commission's website at <https://www.ncdrc.gov>.

The Commission shall promptly notify the senior resident superior court judge of any disciplinary action taken with respect to a mediator on the list of certified mediators for the judicial district.

(c) **Mediator Information Directory.** To assist the parties in designating a mediator, the Commission shall post a list of certified superior court mediators on its website at <https://www.ncdrc.gov>, accompanied by each mediator's contact information and the judicial districts in which each mediator is available to serve. If a mediator has supplied it to the Commission, the list shall also provide the mediator's designated attendance method and the mediator's biographical information, including information about the mediator's education, professional experience, and mediation training and experience.

(d) **Withdrawal or Disqualification of the Mediator.**

- (1) Any party may move the senior resident superior court judge of the judicial district where the action is pending for an order disqualifying the mediator using a Notice of Withdrawal/Disqualification of Mediator and Order for

Substitution of Mediator, Form AOC-DRC-20. For good cause, an order disqualifying the mediator shall be entered.

- (2) A mediator who wishes to withdraw from a case may file a Notice of Withdrawal/Disqualification of Mediator and Order for Substitution of Mediator, Form AOC-DRC-20, with the senior resident superior court judge of the judicial district where the action is pending.
- (3) If a mediator withdraws or is disqualified, then a substitute mediator shall be designated or appointed under this rule. A mediator who has withdrawn or been disqualified shall not be entitled to receive an administrative fee, unless the mediation has been commenced.

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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. Parties to the action, to include the following:
 1. All individual parties.
 2. Any party that is a nongovernmental entity shall be represented at the mediated settlement conference by an officer, employee, or agent who is not the entity's outside counsel and who has been authorized to decide whether, and on what terms, to settle the action on behalf of the entity, or who has been authorized to negotiate on behalf of the entity and can promptly communicate during the conference with persons who have decision-making authority to settle the action; provided, however, that if a specific procedure is required by law (e.g., a statutory pre-audit certificate) or the entity's governing documents (e.g., articles of incorporation, bylaws, partnership agreement, articles of organization, or operating agreement) to approve the terms of the settlement, then the representative shall have the authority to negotiate and make recommendations to the applicable approval authority in accordance with that procedure.

3. Any party that is a governmental entity shall be represented at the mediated settlement conference by an employee or agent who is not the entity's outside counsel and who: (i) has authority to decide on behalf of the entity whether and on what terms to settle the action; (ii) has been authorized to negotiate on behalf of the entity and can promptly communicate during the conference with persons who have decision-making authority to settle the action; or (iii) has authority to negotiate on behalf of the entity and to make a recommendation to the entity's governing board, if under applicable law the proposed settlement terms can be approved only by the entity's governing board.

Notwithstanding anything in these rules to the contrary, any agreement reached which involves a governmental entity may be subject to the provisions of N.C.G.S. § 159-28(a).

- b. A representative of each liability insurance carrier, uninsured motorist insurance carrier, and underinsured motorist insurance carrier, which may be obligated to pay all or part of any claim presented in the action. Each carrier shall be represented at the mediated settlement conference by an officer, employee, or agent, other than the carrier's outside counsel, who has the authority to make a decision on behalf of the carrier, or who has been authorized to negotiate on behalf of the carrier, and can promptly communicate during the conference with persons who have decision-making authority.
- c. At least one counsel of record for each party or other participant whose counsel has appeared in the action.

(2) **Attendance Method.**

a. **Determination.**

1. All parties and persons required to attend a mediated settlement conference may agree to conduct the conference in person, using remote technology, or using a hybrid of in-person attendance and remote technology.
2. If all parties and persons required to attend the conference do not agree on an attendance method and the mediator has designated in the Mediator Information Directory that he or she will conduct

conferences only using remote technology, then the conference shall be conducted using remote technology.

3. If all parties and persons required to attend the conference do not agree on an attendance method and the mediator has not selected remote technology as his or her designated attendance method in the Mediator Information Directory, then the conference shall be conducted in person.

- b. **Order by Court; Mediator Withdrawal.** The senior resident superior court judge, upon motion of a party and notice to the mediator and to all other parties and persons required to attend the mediated settlement conference, may order that the conference be conducted in person, using remote technology, or using a hybrid of in-person attendance and remote technology.

If the method of attendance ordered by the judge is contrary to the attendance method the mediator has designated in the Mediator Information Directory, then the mediator may withdraw from the case under Rule 2(d).

- (3) **Scheduling.** Participants required to attend the mediated settlement conference shall promptly notify the mediator after designation or appointment of any significant problems that they may have with the dates for conference sessions before the completion deadline, and shall inform the mediator of any problems that arise before an anticipated mediated settlement 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 the 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.
- (4) **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.
- (5) **Safety Compliance.** The mediator and all parties and persons required to attend a mediated settlement conference shall comply with all federal, state, and local safety guidelines that are in place for trial court proceedings at the time of the conference.

(b) **Notifying Lienholders.** Any party or attorney who has received notice of a lien, or other claim upon proceeds recovered in the action, shall notify the lienholder or claimant of the date, time, and location of the mediated settlement conference, and shall request that the lienholder or claimant attend the conference or make a representative available with whom to communicate during the conference.

(c) **Finalizing Agreement.**

- (1) If an agreement is reached at the mediated settlement conference, then the parties shall reduce the terms of the agreement to writing and sign the writing, ~~along with their counsel~~. By stipulation of the parties and at the parties' expense, the agreement may be electronically recorded. If the agreement resolves all issues in the dispute, then a consent judgment or one or more voluntary dismissals shall be filed with the court by such persons as the parties shall designate.
- (2) If the agreement resolves all issues at the mediated settlement conference, then the parties shall give a copy of the signed agreement, consent judgment, or voluntary dismissal to the mediator and to all parties at the conference, and shall file the consent judgment or voluntary dismissal with the court within thirty days of the conference, or within ninety days if the State or a political subdivision of the State is a party to the action, or before expiration of the mediation deadline, whichever is later. In all cases, a consent judgment or voluntary dismissal shall be filed prior to the scheduled trial.
- (3) If an agreement that resolves all issues in the dispute is reached prior to the mediated settlement conference, or is finalized while the conference is in recess, then the parties shall reduce the terms of the agreement to writing and sign the writing, ~~along with their counsel~~, and shall file a consent judgment or voluntary dismissal disposing of all issues with the court within thirty days of the conference, or within ninety days if the State or a political subdivision of the State is a party to the action, or before expiration of the mediation deadline, whichever is later.
- (4) A designee may sign the agreement on behalf of a party only if the party does not attend the mediated settlement conference in person and the party provides the mediator with a written verification that the designee is authorized to sign the agreement on the party's behalf.
- (5) When an agreement is reached upon all issues, all attorneys of record must notify the senior resident superior court judge within four business days of the settlement and advise who will file the consent judgment or voluntary dismissal.

(d) **Payment of the Mediator’s Fee.** The parties shall pay the mediator’s fee as provided by Rule 7.

(e) **Related Cases.** Upon application of any party or person, the senior resident superior court judge may order that an attorney of record or a party in a pending superior court civil action, or a representative of an insurance carrier that may be liable for all or any part of a claim pending in superior court, shall, upon reasonable notice, attend a mediation conference that may be convened in another pending case, regardless of the forum in which the other case may be pending, provided that all parties in the other pending case consent to the attendance ordered under this rule. Any attorney, party, or representative of an insurance carrier that properly attends a mediation conference under this rule shall not be required to pay any of the mediation fees or costs related to that mediation conference. Any disputed issue concerning an order entered under this rule shall be determined by the senior resident superior court judge who entered the order.

(f) **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(a). Parties subject to Chapter 159 of the General Statutes of North Carolina—which provides, among other things, that if an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, then the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been pre-audited to assure compliance with N.C.G.S. § 159-28(a) and that an obligation incurred in violation of N.C.G.S. § 159-28(a) or (a1) is invalid and may not be enforced—should, as appropriate, inform all participants at the beginning of the mediation of the preaudit requirement and the consequences for failing to preaudit under N.C.G.S. § 159-28.

Rule 4(a)(2)(a) describes the attendance methods used for mediated settlement conferences. If a conference is conducted using remote technology, then the mediator should ensure that the parties are able to fully communicate with all other participants and videoconferencing is encouraged.

Comment to Rule 4(c). Consistent with N.C.G.S. § 7A-38.1(l), if a settlement is reached during a mediated settlement conference, then

the mediator shall ensure that the terms of the settlement are reduced to writing and signed by the parties, or by the parties’ designees, and by the parties’ attorneys before ending the conference. No settlement shall be enforceable unless it has been reduced to writing and signed by the parties or by the parties’ designees.

Cases in which an agreement upon 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 with the court closing documents that do not contain confidential terms (e.g., voluntary dismissal or a consent judgment resolving all claims). Mediators will not be required by local rules to submit agreements to the court.

Comment to Rule 4(e). Rule 4(e) clarifies a senior resident superior court judge’s authority to order a party, attorney of record, or representative of an insurance carrier to attend proceedings in another forum that are related to the superior court civil action. For example,

when there are workers' compensation claims being asserted in a case before North Carolina Industrial Commission, there are typically additional claims asserted in superior court against a third-party tortfeasor. Because of the related nature of the claims, it may be beneficial for a party, attorney of record, or representative of an insurance carrier in the superior court civil action to attend the North Carolina Industrial Commission mediation conference in order to resolve the pending claims. Rule 4(e) specifically authorizes a senior resident superior court judge to order a party, attorney of record, or

representative of an insurance carrier to attend a proceeding in another forum, provided that all parties in the related matter consent and the persons ordered to attend receive reasonable notice of the proceeding. The *North Carolina Industrial Commission Rules for Mediated Settlement and Neutral Evaluation Conferences* contain a similar provision, which provides that persons involved in a North Carolina Industrial Commission case may be ordered to attend a mediated settlement conference in a related matter.

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Rule 7. Compensation of the Mediator and Sanctions

(a) **By Agreement.** When a mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator. Notwithstanding the terms of the parties' agreement with the mediator, subsection (d) of this rule shall apply to an issue involving compensation of the mediator. Subsections (e) and (f) of this rule shall apply unless the parties' agreement provides otherwise.

(b) **By Court Order.** When a mediator is appointed by the court, the parties shall compensate the mediator for mediation services at the rate of \$150 per hour. The parties shall also pay the mediator a one-time, per-case administrative fee of \$175, due upon appointment.

(c) **Change of Appointed Mediator.** Under Rule 2(a), the parties may select a certified mediator to conduct the mediated settlement conference. Parties who fail to select a certified mediator and then desire a substitution after the court has appointed a mediator shall obtain court approval for the substitution by filing a Consent Order for Substitution of Mediator, Form AOC-CV-836. The court may approve the substitution only upon proof of payment to the court's original appointee of the \$175 one-time, per-case administrative fee, any other amount owed for mediation services under subsection (b) of this rule, and any postponement fee owed under subsection (e) of this rule.

(d) **Indigent Cases.** Any party found to be indigent by the court for the purposes of these rules shall not be required to pay a mediator's fee. A mediator conducting a mediated settlement conference under these rules shall waive the payment of fees from parties found by the court to be indigent. Any party may move the senior resident superior court judge for a finding of indigency and ask to be relieved of that party's obligation to pay a share of the mediator's fee using a Petition and Order for Relief from Obligation to Pay Mediator's Fee, Form AOC-CV-814.

The motion shall be heard subsequent to the completion of the conference or, if the parties do not settle their dispute, subsequent to trial. In ruling upon the motion, the judge shall apply the criteria enumerated in N.C.G.S. § 1-110(a), but shall consider the outcome of the action and whether a judgment was rendered in the movant's favor. The court shall enter an order granting or denying the party's motion.

(e) **Postponements and Fees.**

- (1) As used in subsection (e) of this rule, "postponement" means to reschedule or not proceed with a mediated settlement conference once a date for a session of the conference has been scheduled by the mediator. After a conference has been scheduled for a specific date, a party may not unilaterally postpone the conference.
- (2) A mediated settlement conference session may be postponed by the mediator for good cause only after notice by the movant to all parties of the reason for the postponement and a finding of good cause by the mediator. Good cause exists when the reason for the postponement involves a situation over which the party seeking the postponement has no control, including, but not limited to: (i) the illness of a party or attorney, (ii) a death in the family of a party or attorney, (iii) a sudden and unexpected demand by a judge that a party or attorney for a party appear in court for a purpose not inconsistent with the guidelines established by Rule 3.1(d) of the General Rules of Practice for the Superior and District Courts, or (iv) inclement weather exists, such that travel is prohibitive. Where good cause is found, the mediator shall not assess a postponement fee against a party.
- (3) The settlement of a case prior to the scheduled date for mediation shall be good cause for postponement; provided, however, that the mediator was notified of the settlement immediately after it was reached and at least fourteen calendar days prior to the date scheduled for the mediation.
- (4) Without a finding of good cause, a mediator may also postpone a scheduled mediated settlement conference session with the consent of all parties. A fee of \$150 shall be paid to the mediator if the postponement is allowed. However, if the request for a postponement is made within seven calendar days of the scheduled date for mediation, then the postponement fee shall be \$300. The postponement fee shall be paid by the party requesting the postponement, unless otherwise agreed to by the parties. Postponement fees are in addition to the one-time, per-case administrative fee provided for in subsection (b) of this rule.
- (5) If the parties select a certified mediator and contract with the mediator as to compensation, then the parties and the mediator

may specify in their contract alternatives to the postponement fees otherwise required under subsection (e) of this rule.

(f) **Payment of Compensation by Parties.** Unless otherwise agreed to by the parties or ordered by the court, the mediator’s fee shall be paid in equal shares by the parties. For purposes of this rule, multiple parties shall be considered one party when they are represented by the same counsel. Parties obligated to pay a share of the fees shall pay them equally. Payment shall be due upon completion of the mediated settlement conference.

Comment

Comment to Rule 7(b). Court-appointed mediators may not be compensated for travel time, mileage, or any other out-of-pocket expenses associated with a court-ordered mediation.

It is not unusual for two or more related cases to be mediated collectively. A mediator shall use his or her business judgment in assessing the one-time, per-case administrative fee when two or more cases are mediated together, and set his or her fee according to the amount of time that he or she spent in an effort to schedule the matters for mediation. The mediator may charge a flat fee of \$175 if scheduling was relatively easy, or multiples of that amount if more effort was required.

Comment to Rule 7(e). Nonessential requests for postponements work a hardship on parties and mediators and serve only to inject delay into a process and program designed to expedite litigation. It is expected that mediators will assess a postponement fee in all instances where a request does not appear to be absolutely warranted. Moreover, mediators are encouraged not to agree to a postponement in instances where, in the mediator’s judgment, the mediation could be held as scheduled.

Comment to Rule 7(f). If a party is found by a senior resident superior court judge to have failed to attend a mediated settlement conference without good cause, then the court may require that party to pay the mediator’s fee and related expenses

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Rule 8. Mediator Certification and Decertification

(a) The Commission may receive and approve applications for certification of persons to be appointed as superior court mediators. In order to be certified, an applicant must satisfy the requirements of this subsection.

- (1) The applicant must complete: (i) at least forty hours of Commission-certified trial court mediation training, or (ii) at least forty hours of Commission-certified family and divorce mediation training and a sixteen-hour Commission-certified supplemental trial court mediation training.
- (2) The applicant must have the following training, experience, and qualifications:
 - a. An attorney-applicant may be certified if he or she:

1. is a member in good standing of the North Carolina State Bar; or
 2. is a member similarly in good standing of the bar of another state and eligible to apply for admission to the North Carolina State Bar under Chapter 1, Subchapter C, of the North Carolina State Bar Rules and the Rules Governing the Board of Law Examiners and the Training of Law Students, 27 N.C. Admin. Code 1C.0105; demonstrates familiarity with North Carolina court structure, legal terminology, and civil procedure; provides to the Commission three letters of reference about the applicant's good character, including at least one letter from a person with knowledge of the applicant's professional practice; and possesses the experience required by this subsection; and
 3. has at least five years of experience after date of licensure as a judge, practicing attorney, law professor, or mediator, or has equivalent experience.
- b. A nonattorney-applicant may be certified if he or she:
1. has, as a prerequisite for the forty hours of Commission-certified trial court mediation training, completed a six-hour training provided by a Commission-certified trainer on North Carolina court organization, legal terminology, civil court procedure, the attorney-client privilege, the unauthorized practice of law, and the common legal issues arising in superior court civil actions;
 2. has provided to the Commission three letters of reference as to the applicant's good character, including at least one letter from a person with knowledge of the applicant's experience qualifying the applicant under subsection (a)(2)(b)(3) of this rule; and
 3. has completed one of the following:
 - i. a minimum of twenty hours of basic mediation training provided by a trainer acceptable to the Commission and, after completing the twenty-hour training, has mediated at least thirty disputes over the course of at least three years, or has equivalent experience, and possesses a

four-year college degree from an accredited institution, and has four years of a high or relatively high level of professional or management experience of an executive nature in a professional, business, or governmental entity;

- ii. ten years of a high or relatively high level of professional or management experience of an executive nature in a professional, business, or governmental entity, and possesses a four-year college degree from an accredited institution; or
- iii. a master's degree or doctoral degree in alternative dispute resolution studies from an accredited institution and possesses five years of a high or relatively high level of professional or management experience of an executive nature in a professional, business, or governmental entity.

Any current or former attorney who is disqualified by the attorney licensing authority of any state shall be ineligible for certification under subsections (a)(2)(a) and (a)(2)(b) of this rule.

(3) The applicant must complete the following observations:

- a. **All Applicants.** All applicants for certification shall observe two ~~mediated settlement~~mediation conferences. ~~at~~At least one of ~~which~~the mediation conferences shall be ~~of~~ a mediated settlement conference in a superior court civil action, and the other may be any mediation conference described under subsection (a)(3)(c) of this rule.
- b. **Nonattorney-Applicants.** Nonattorney-applicants for certification shall observe three ~~mediated settlement~~mediation conferences, in addition to those required under subsection (a)(3)(a) of this rule, that are conducted by at least two different mediators. At least one of the additional ~~observations~~mediation conferences shall be ~~of~~ a mediated settlement conference in a superior court civil action, and the others may be any mediation conferences described under subsection (a)(3)(c) of this rule.
- c. **Conferences Eligible for Observation.** ~~Conferences~~Mediation conferences eligible for observation ~~under subsection (a)(3) of this rule~~ shall be either: (i) those

conducted in cases pending before the North Carolina superior courts, the North Carolina Court of Appeals, the North Carolina Industrial Commission, the North Carolina Office of Administrative Hearings, the North Carolina Department of Labor, or the federal district courts in North Carolina ~~that are ordered to mediation;~~ or (ii) those conducted by ~~pursuant to~~ an agreement of the parties ~~which incorporates the rules of mediation of one of those entities~~ in disputes prior to litigation.

~~Conferences eligible for observation shall also include those conducted in disputes prior to litigation that are mediated by an agreement of the parties and incorporate the rules for mediation of one of the entities named above.~~

All mediation conferences shall be conducted by a certified superior court mediator, ~~under~~ shall be conducted pursuant to mediation rules adopted by one of the above entities, and shall be observed from their beginning ~~to~~ until settlement, ~~or when an impasse is declared~~ until the point that an impasse has been declared. Observations shall be reported on a Certificate of Observation – Mediated Settlement Conference Program, Form AOC-DRC-07. All observers shall conform their conduct to the Commission’s policy on *Guidelines for Observer Conduct*.

- (4) The applicant must demonstrate familiarity with the statutes, rules, and practices governing mediated settlement conferences in North Carolina.
- (5) The applicant must be of good moral character and adhere to the Standards of Professional Conduct for Mediators when acting under these rules. On his or her application(s) for certification or application(s) for certification renewal, an applicant shall disclose any:
 - a. pending criminal charges;
 - b. criminal convictions;
 - c. restraining orders issued against him or her;
 - d. failures to appear;
 - e. closed grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country;

- f. disciplinary action taken against him or her by a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country, including, but not limited to, disbarment, revocation, decertification, or suspension of any professional license or certification, including the suspension or revocation of any license, certification, registration, or qualification to serve as a mediator in another state or country, even if stayed;
- g. judicial sanctions imposed against him or her in any jurisdiction;
- h. civil judgments, tax liens, or bankruptcy filings that occurred within the ten years preceding the date that the initial or renewal application was filed with the Commission; or
- i. pending grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country.

If a matter listed in subsections (a)(5)(a) through (a)(5)(h) of this rule arises after a mediator submits his or her initial or renewal application for certification, then the mediator shall report the matter to the Commission no later than thirty days after receiving notice of the matter.

If a pending grievance or complaint described in subsection (a)(5)(i) of this rule is filed after a mediator submits his or her initial or renewal application for certification, then the mediator shall report the matter to the Commission no later than thirty days after receiving notice of the matter or, if a response to the grievance or complaint is permitted by the professional licensing, certifying, or regulatory body, no later than thirty days after the due date for the response.

As referenced in this subsection, criminal charges or convictions (excluding infractions) shall include felonies, misdemeanors, or misdemeanor traffic violations (including driving while impaired) under the law of North Carolina or another state, or under the law of a federal, military, or foreign jurisdiction, regardless of whether the adjudication was withheld (prayer for judgment continued) or the imposition of a sentence was suspended.

- (6) The applicant must submit proof of qualifications set out in this rule on a form provided by the Commission.

- (7) The applicant must pay all administrative fees established by the NCAOC upon the recommendation of the Commission.
- (8) The applicant must agree to accept the fee ordered by the court under Rule 7 as payment in full of a party's share of the mediator's fee.
- (9) The applicant must comply with the requirements of the Commission for completing and reporting continuing mediator education or training.
- (10) The applicant must agree, once certified, to make reasonable efforts to assist applicants for mediator certification in completing their observation requirements.

(b) No mediator who held a professional license and relied upon that license to qualify for certification under subsections (a)(2)(a) or (a)(2)(b) of this rule shall be decertified or denied recertification because that mediator's license lapses, is relinquished, or becomes inactive; provided, however, that this subsection shall not apply to any mediator whose professional license is revoked, suspended, lapsed, relinquished, or whose professional license becomes inactive due to disciplinary action or the threat of disciplinary action from his or her licensing authority. Any mediator whose professional license is revoked, suspended, lapsed, or relinquished, or whose professional license becomes inactive, shall report the matter to the Commission.

(c) A mediator's certification may be revoked or not renewed at any time it is shown to the satisfaction of the Commission that a mediator no longer meets the qualifications set out in this rule or has not faithfully observed these rules or those of any district in which he or she has served as a mediator. Any person who is or has been disqualified by a professional licensing authority of any state for misconduct shall be ineligible for certification under this rule. No application for certification renewal shall be denied on the grounds that the mediator's training and experience does not meet the training and experience required under rules which were promulgated after the date of the applicant's original certification.

Comment

Comment to Rule 8(a)(2). Commission staff has discretion to waive the requirements set out in Rule 8(a)(2)(a)(2) and Rule 8(a)(2)(b)(1), if the applicant can demonstrate sufficient familiarity with North Carolina legal terminology, court structure, and procedure.

Comment to Rule 8(a)(2)(b)(3). Administrative, secretarial, and paraprofessional experience will not generally qualify as "a high or relatively high level of professional or management experience of an executive nature."

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Rule 10. Other Settlement Procedures

(a) **Order Authorizing Other Settlement Procedures.** Upon receipt of a motion by the parties seeking authorization to utilize a settlement procedure in lieu of a mediated settlement conference, the senior resident superior court judge may order the use of the procedure requested under these rules or under local rules, unless the court finds that the parties did not agree on all of the relevant details of the procedure, including the items in Rule 1(c)(2), or that, for good cause, the selected procedure is not appropriate for the case or the parties.

(b) **Other Settlement Procedures Authorized by These Rules.** In addition to a mediated settlement conference, the following settlement procedures are authorized by these rules:

- (1) Neutral evaluation under Rule 11 (a settlement procedure in which a neutral offers an advisory evaluation of the case following summary presentations by each party).
- (2) Nonbinding arbitration under Rule 12 (a settlement procedure in which a neutral renders an advisory decision following summary presentations of the case by the parties).
- (3) Binding arbitration under Rule 12 (a settlement procedure in which a neutral renders a binding decision following presentations by the parties).
- (4) A summary trial (jury or non-jury) under Rule 13 (a settlement procedure that is either: (i) a nonbinding trial in which a privately procured jury or presiding officer renders an advisory verdict following summary presentations by the parties and, in the case of a summary jury trial, a summary of the law presented by a presiding officer; or (ii) a binding trial in which a privately procured jury or presiding officer renders a binding verdict following summary presentations by the parties and, in the case of a summary jury trial, a summary of the law presented by a presiding officer).

(c) **General Rules Applicable to Other Settlement Procedures.**

- (1) **When Proceeding Is Conducted.** Other settlement procedures ordered by the court under these rules shall be conducted no later than the date for completion set out in the court's original mediated settlement conference order, unless extended by the senior resident superior court judge.
- (2) **Authority and Duties of the Neutral.**
 - a. **Authority of the Neutral.**
 1. **Control of the Proceeding.** The neutral, arbitrator, or presiding officer shall at all times be

in control of the proceeding and the procedures to be followed.

2. **Scheduling the Proceeding.** The neutral, arbitrator, or presiding officer shall attempt to schedule the proceeding at a time that is convenient to the participants, attorneys, and the neutral. In the absence of agreement, the neutral shall select the date for the proceeding.

b. **Duties of the Neutral.**

1. **Informing the Parties.** At the beginning of the proceeding, the neutral, arbitrator, or presiding officer shall define and describe for the parties:
 - i. the process of the proceeding;
 - ii. the differences between the proceeding and other forms of conflict resolution;
 - iii. the costs of the proceeding;
 - iv. the inadmissibility of conduct and statements as provided by N.C.G.S. § 7A-38.1(*l*) and subsection (c)(6) of this rule; and
 - v. the duties and responsibilities of the neutral and the participants.
2. **Disclosure.** The neutral has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice, or partiality.
3. **Reporting Results of the Proceeding.** The neutral, arbitrator, or presiding officer shall report the results of the proceeding to the court using a Report of Neutral Conducting Settlement Procedure Other Than Mediated Settlement Conference or Arbitration in Superior Court Civil Action, Form AOC-CV-817. The NCAOC may require the neutral to provide statistical data for evaluation of other settlement procedures.
4. **Scheduling and Holding the Proceeding.** It is the duty of the neutral, arbitrator, or presiding officer to schedule and conduct the proceeding prior to the completion deadline set out in the court's order. The deadline for completion of the proceeding shall be strictly observed by the neutral, arbitrator, or presiding officer, unless the deadline is changed

by a written order of the senior resident superior court judge.

- (3) **Extensions of Time.** A party or a neutral may request that the senior resident superior court judge extend the deadline for completion of the settlement procedure. The request for an extension shall state the reasons the extension is sought and shall be served by the movant on the other parties and the neutral. If the court grants the motion for an extension, then the order shall set a new deadline for the completion of the settlement procedure. A copy of the order shall be delivered to all parties and the neutral by the person who sought the extension.
- (4) **Where the Proceeding Is Conducted.** The neutral, arbitrator, or presiding officer shall be responsible for reserving a place agreed to by the parties, setting a time for and making other arrangements for the proceeding, and for giving timely notice to all attorneys and unrepresented parties in writing of the time and location of the proceeding.
- (5) **No Delay of Other Proceedings.** Settlement proceedings shall not be the cause for a delay of other proceedings in the case, including, but not limited to, the conduct or completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the senior resident superior court judge.
- (6) **Inadmissibility of Settlement Proceedings.** Evidence of statements made and conduct that occurs in a mediated settlement conference or other settlement proceeding conducted under this rule, whether attributable to a party, mediator, neutral, or neutral-observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or another civil action involving the same claim, except:
 - a. in proceedings for sanctions under subsection (c) of this rule;
 - b. in proceedings to enforce or rescind a settlement of the action;
 - c. in disciplinary proceedings before the North Carolina State Bar or any agency established to enforce the Standards of Professional Conduct for Mediators or standards of conduct for other neutrals; or
 - d. in proceedings to enforce laws concerning juvenile or elder abuse.

As used in this subsection, “neutral observer” includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at a proceeding conducted under this rule, or during its recesses, shall be enforceable, unless the agreement has been reduced to writing and signed by the parties or by the parties’ designees. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a conference or other settlement proceeding.

No mediator, neutral, or neutral-observer present at a settlement proceeding shall be compelled to testify or produce evidence in any civil proceeding concerning statements made and conduct that occurs in anticipation of, during, or as a follow-up to a conference or other settlement proceeding under subsection (c) of this rule. This includes proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and during proceedings for sanctions under this section, proceedings to enforce laws concerning juvenile or elder abuse, and disciplinary hearings before the North Carolina State Bar or any agency established to enforce the Standards of Professional Conduct for Mediators or standards of conduct for other neutrals.

- (7) **No Record Made.** There shall be no record made of any proceedings under these rules, unless the parties have stipulated to binding arbitration or a binding summary trial, in which case any party, after giving adequate notice to opposing parties, may make a record of the proceeding.
- (8) **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 and a party or a party’s attorney on any matter related to the proceeding, except about administrative matters.
- (9) **Duties of the Parties.**
 - a. **Attendance.** All persons required to attend a mediated settlement conference under Rule 4 shall attend any other nonbinding settlement procedure authorized by these rules and ordered by the court, except those persons to whom the parties agree and the senior resident superior court judge excuses. Those persons required to attend other settlement procedures which are binding in nature, authorized by these rules, and ordered by the court, shall be those

persons to whom the parties agree. Notice of the agreement shall be given to the court and the neutral by filing a Motion to Use Settlement Procedure Other Than Mediated Settlement Conference in Superior Court Civil Action and Order, Form AOC-CV-818.

b. **Finalizing Agreement.**

1. If an agreement that resolves all issues in the dispute is reached at the neutral evaluation, arbitration, or summary trial, then the parties to the agreement shall reduce the terms of the agreement to writing and sign it ~~along with their counsel~~. A consent judgment or voluntary dismissal shall be filed with the court by such persons as the parties shall designate within fourteen days of the conclusion of the proceeding or before the expiration of the deadline for its completion, whichever is later. The person responsible for filing closing documents with the court shall also sign the report to the court. The parties shall give a copy of their signed agreement, consent judgment, or voluntary dismissal to the neutral, arbitrator, or presiding officer, and all parties at the proceeding.
2. If an agreement that resolves all issues in the dispute is reached prior to the evaluation, arbitration, or summary trial, or while the proceeding is in recess, then the parties shall reduce the terms of the agreement to writing and sign the writing ~~along with their counsel~~ and shall file a consent judgment or voluntary dismissal disposing of all issues with the court within fourteen days of the agreement or before the expiration of the deadline for completion of the proceeding, whichever is later.
3. A designee may sign the agreement on behalf of a party only if the party does not attend the evaluation, arbitration, or summary trial in person and the party provides the neutral with a written verification that the designee is authorized to sign the agreement on the party's behalf.
4. When an agreement is reached upon all issues in the dispute, all attorneys of record must notify the senior resident superior court judge within four

business days of the settlement and advise the judge of the persons who will sign the consent judgment or voluntary dismissal.

c. **Payment of the Neutral's Fee.** The parties shall pay the neutral's fee as provided by subsection (c)(12) of this rule.

(10) **Selection of Neutrals in Other Settlement Procedures.** The parties may select any person to serve as a neutral in a settlement procedure authorized under these rules. For arbitration, the parties may either select a single arbitrator or a panel of arbitrators. Notice of the parties' selection shall be given to the court and to the neutral by filing a Motion to Use Settlement Procedure Other Than Mediated Settlement Conference in Superior Court Civil Action and Order, Form AOC-CV-818, within twenty-one days after the entry of the order requiring a mediated settlement conference.

The motion shall state: (i) the name, address, and telephone number of the neutral; (ii) the rate of compensation of the neutral; and (iii) that the neutral and opposing counsel have agreed upon the selection and compensation.

(11) **Disqualification.** Any party may move the resident or presiding superior court judge of the district in which an action is pending for an order disqualifying the neutral and, for good cause, an order disqualifying the neutral shall be entered. Good cause exists if the selected neutral has violated any standards of conduct of the North Carolina State Bar or any standards of conduct for neutrals adopted by the Supreme Court.

(12) **Compensation of the Neutral.** A neutral's compensation shall be paid in an amount agreed to by the parties and the neutral. Time spent reviewing materials in preparation for the neutral evaluation, conducting the proceeding, and making and reporting the award shall be compensable time.

Unless otherwise agreed by the parties or ordered by the court, the neutral's fee shall be paid in equal shares by the parties. For purposes of this section, multiple parties shall be considered one party when they are represented by the same counsel. The presiding officer and jurors in a summary jury trial are neutrals within the meaning of these rules and shall be compensated by the parties.

(13) **Sanctions for Failure to Attend Other Settlement Procedure or Pay the Neutral's Fee.** Any person required to attend a settlement proceeding or to pay a neutral's fee in compliance with N.C.G.S. § 7A-38.1 and these rules who fails to

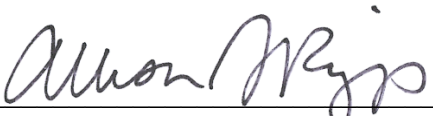
attend the proceeding or pay the neutral's fee without good cause shall be subject to the contempt power of the court and any monetary sanctions imposed by a resident or presiding superior court judge. The monetary sanctions may include, but are not limited to, the payment of fines, attorneys' fees, the neutral's fee, expenses, and loss of earnings incurred by persons attending the proceeding. A party seeking sanctions against a person or a judge, upon his or her own motion, shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served on all parties and any person against whom sanctions are being sought. If the court imposes sanctions, it shall do so after giving notice to the person, holding a hearing, and issuing a written order that contains both findings of fact that are supported by substantial evidence and conclusions of law.

* * *

These amendments to the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions become effective on 6 January 2025.


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 11th day of December 2024.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 11th day of December 2024.



GRANT E. BUCKNER
Clerk of the Supreme Court