

IN THE SUPREME COURT OF NORTH CAROLINA

ORDER AMENDING THE RULES FOR SETTLEMENT
PROCEDURES IN DISTRICT COURT FAMILY FINANCIAL CASES

Pursuant to subsection 7A-38.4A(k) and subsection 7A-38.4A(o) of the General Statutes of North Carolina, the Court hereby amends the Rules for Settlement Procedures in District Court Family Financial Cases. This order affects Rules 2, 7, and 8.

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Rule 2. Designation of the Mediator

(a) **Designation of a Mediator by Agreement of the Parties.** By agreement, the parties may designate a family financial mediator certified under these rules by filing a ~~Designation of Mediator in Family Financial Case~~Designation of Mediator by Agreement of Parties in Family Financial Case and Order of Appointment, Form AOC-CV-825 (Designation Form), ~~with the court at the scheduling and discovery conference~~ requesting that the chief district court judge approve the designation. The Designation Form shall be filed at the scheduling and discovery conference. 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 mediation. The Designation Form shall state: (i) the name, e-mail address, address, and telephone number of the designated 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.

~~A copy of each form submitted to the court and the court's order requiring a mediated settlement conference shall be delivered to the mediator by the parties.~~

(b) **Appointment of a Mediator by the Court.** If the parties cannot agree on the designation of a ~~certified~~ mediator, then the parties shall notify the court by filing an ~~Designation Form~~Appointment of Mediator by Court Order in Family Financial Case, Form AOC-CV-841 (Mediator Appointment Form), requesting that the court appoint a certified mediator. ~~The Designation~~Mediator Appointment Form shall be filed at the scheduling and discovery conference and shall state that the attorneys for the parties have discussed the designation of a mediator and have been unable to agree on a mediator. Upon receipt of a ~~Designation~~Mediator Appointment

Form ~~requesting the appointment of a mediator~~, or ~~upon~~ in the event that the parties' failure to file a Designation Form or a Mediator Appointment Form with the court at the scheduling and discovery conference, the court shall appoint a family financial mediator certified under these rules who has expressed a willingness to mediate disputes within the judicial district.

In appointing a mediator, the court 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 court shall retain discretion to depart from a strict rotation of mediators when, in the court's discretion, there is good cause in a case to do so.

As part of the application or 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 the mediator's removal from the district's appointment list by the Dispute Resolution Commission (Commission) or the chief district court judge.

The Commission shall provide the district court judges in each judicial district a list of certified family financial mediators requesting appointments in that district. The list shall contain each mediator's name, address, and telephone number. The list shall be provided to the judges electronically through the Commission's website at <https://www.ncdrc.gov>.

The Commission shall promptly notify the district court 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 assemble, maintain, and post a list of certified family financial 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 chief district court judge of the judicial district where the case 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 chief district court judge of the judicial district where the case 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 7. Compensation of the Mediator and Sanctions

(a) **By Agreement.** When a mediator is selected by agreement of 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 (e) of this rule shall apply to an issue involving compensation of the mediator. Subsections (d) and (f) of this rule shall apply unless the parties' agreement provides otherwise.

(b) **By Court Order.** When the 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, which accrues upon appointment.

(c) **Change of Appointed Mediator.** Parties who fail to select a 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 due for mediation services under subsection (b) of this rule, and any postponement fee owed under subsection (f) of this rule.

(d) **Payment of Compensation by the 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. Payment shall be due upon the completion of the mediated settlement conference.

(e) **Inability to Pay.** Any party found by the court to be unable to pay its full share of the mediator's fee shall not be required to do so. Any party required to pay a share of a mediator's fee under subsections (b) and (c) of this rule may move the

court for relief using a Petition and Order for Relief from Obligation to Pay All or Part of Mediator's Fee in Family Financial Case, Form AOC-CV-828.

In ruling upon the motion, the court may consider the income and assets of the movant and the outcome of the dispute. The court shall enter an order granting or denying the party's motion. The court may require that one or more shares be paid out of the marital estate.

Any mediator conducting a mediated settlement conference under these rules shall accept as payment in full of a party's share of the mediator's fee that portion paid by, or on behalf of, the party pursuant to a court order issued under this rule.

(f) Postponements and Fees.

- (1) As used in subsection (f) of this rule, "postponement" means to reschedule or not proceed with a mediated settlement conference once a date for 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 may be postponed by a 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 the court 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.
- (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 (f) of this rule.

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.

Comment to Rule 7(d). If a party is found by the court 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.

Comment to Rule 7(f). 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.

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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 mediators for family financial matters in district court. In order to be certified, an applicant must satisfy the requirements of this subsection.

- (1) The applicant for certification must have a basic understanding of North Carolina family law and have completed the requirements of this subsection prior to taking the forty hours of Commission-certified family and divorce mediation training or the sixteen hours of Commission-certified supplemental family and divorce mediation training under subsection (a)(2)(b) of this rule. Applicants ~~should be able to~~ shall demonstrate that they have completed at least twelve hours of basic family law education by:
 - a. attending workshops or programs on topics such as separation and divorce, alimony and postseparation support, equitable distribution, child custody and support, and domestic violence;
 - b. completing an independent study on these topics, such as viewing or listening to video or audio programs on family law topics; or

- c. having equivalent North Carolina family law experience, including work experience that satisfies one of the categories set forth in the Commission's policy on interpreting Rule 8(a)(1) (e.g., the applicant is an experienced family law judge or a North Carolina State Bar board certified family law specialist).

(2) The applicant for certification must:

- a. have been designated a Family Mediator Advanced Practitioner by the Association for Conflict Resolution (ACR) and have earned an undergraduate degree from an accredited four-year college or university; or
- b. have completed either (i) forty hours of Commission-certified family and divorce mediation training; or (ii) forty hours of Commission-certified trial court mediation training and sixteen hours of Commission-certified supplemental family and divorce mediation training; and be
 - 1. a member in good standing of the North Carolina State Bar or 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, with at least five years of experience after the date of licensure as a judge, practicing attorney, law professor, or mediator, or must possess equivalent experience;
 - 2. a licensed psychiatrist under N.C.G.S. § 90-9.1, with at least five years of experience in the field after the date of licensure;
 - 3. a licensed psychologist under N.C.G.S. §§ 90-270.1 to -270.22, with at least five years of experience in the field after the date of licensure;
 - 4. a licensed marriage and family therapist under N.C.G.S. §§ 90-270.45 to -270.63, with at least five years of experience in the field after the date of licensure;

5. a licensed clinical social worker under N.C.G.S. § 90B-7, with at least five years of experience in the field after the date of licensure;
 6. a licensed professional counselor under N.C.G.S. §§ 90-329 to -345, with at least five years of experience in the field after the date of licensure; or
 7. an accountant certified in North Carolina, with at least five years of experience in the field after the date of certification.
- (3) If the applicant is not licensed to practice law in one of the United States, then the applicant must have, as a prerequisite for the forty hours of Commission-certified family and divorce mediation training under subsection (a)(2)(b) of this rule, completed six hours of training on North Carolina legal terminology, court structure, and civil procedure, provided by a Commission-certified trainer. An attorney licensed to practice law in a state other than North Carolina shall satisfy this requirement by completing a self-study course, as directed by Commission staff.
 - (4) If the applicant is not licensed to practice law in North Carolina, then the applicant must provide three letters of reference to the Commission about the applicant's good character, including at least one letter from a person with knowledge of the applicant's professional practice and experience qualifying the applicant under subsection (a) of this rule.
 - (5) The applicant must have observed, as a neutral observer and with the permission of the parties, two mediations involving a custody or family financial issue conducted by a mediator who (i) is certified under these rules, (ii) has an Family Mediator Advanced Practitioner Designation from the ACR, or (iii) is a mediator certified by the NCAOC for custody matters. ~~Mediations eligible for observation shall also include mediations conducted in matters prior to litigation of family financial disputes that are mediated by agreement of the parties and incorporate these rules.~~

If the applicant is not an attorney licensed to practice law in one of the United States, then the applicant must observe three additional mediations involving civil or family-related disputes financial issues conducted by a Commission-certified family financial mediator, ~~or disputes prior to litigation that are conducted by a Commission-certified mediator and are conducted pursuant to a court order or an agreement of the parties incorporating the mediation rules of a North Carolina state or federal court.~~

Mediations eligible for observation under this subsection may include mediations conducted in matters prior to litigation of family financial cases that are mediated pursuant to an agreement of the parties incorporating these rules. All mediations shall be observed from their beginning until settlement, or until the point that an impasse has been declared, and shall be reported by the applicant on a Certificate of Observation - Family Financial Settlement Conference Program, Form AOC-DRC-08. All observers shall conform their conduct to the Commission's policy on *Guidelines for Observer Conduct*.

- (6) The applicant must demonstrate familiarity with the statutes, rules, standards of practice, and standards of conduct governing mediated settlement conferences conducted in North Carolina.
- (7) 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)(7)(a) through (a)(7)(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)(7)(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 adjudication was withheld (prayer for judgment continued) or the imposition of a sentence was suspended.

- (8) The applicant must submit proof of the qualifications set out in this rule on a form provided by the Commission.
- (9) The applicant must pay all administrative fees established by the NCAOC upon the recommendation of the Commission.
- (10) 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.
- (11) The applicant must comply with the requirements of the Commission for completing and reporting continuing mediator education or training.
- (12) 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 subsection (a)(2)(b) of this rule shall be decertified or denied recertification because the mediator's license lapses, is relinquished, or

becomes inactive; provided, however, that this subsection shall not apply to a mediator whose professional license is revoked, suspended, lapsed, or relinquished, or whose professional license becomes inactive due to disciplinary action, or the threat of disciplinary action, from the mediator's licensing authority. Any mediator whose professional license is revoked, suspended, lapsed, 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 if 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 judicial 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 ground that the mediator's training and experience does not satisfy a training and experience requirement promulgated after the date of the mediator's original certification.

Comment

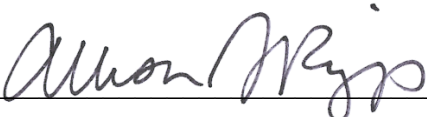
Comment to Rule 8(a)(3). Commission demonstrate sufficient familiarity with North Carolina legal terminology, court structure, and civil procedure. staff has discretion to waive the requirements set out in Rule 8(a)(3) if an applicant can

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These amendments to the Rules for Settlement Procedures in District Court Family Financial Cases 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.

A handwritten signature in blue ink, appearing to read "Grant E. Buckner", written over a horizontal line.

GRANT E. BUCKNER
Clerk of the Supreme Court