

LOCAL RULES IMPLEMENTING JUVENILE MEDIATION IN THE TENTH JUDICIAL DISTRICT

Purpose and Description

These rules are written to provide guidelines by which a program of juvenile mediation in delinquency cases may be administered in the Tenth Judicial District. The purpose of juvenile mediation is to provide a space where offenders and victims can safely come together to discuss an act that has created harm, to identify the harm and then to determine the best way to repair the harm. The model for this juvenile mediation program is the Restorative Justice Model. Restorative Justice recognizes that wrongdoing is not only lawbreaking, and therefore not only an act against governmental authority, but is also an act which harms the victim, the offender and the community at large. Since Restorative Justice recognizes these different types of harm, it suggests that for the wrong to be made right, all of these harmed entities have a role in restoring whatever has been lost.

The Juvenile Mediation program for the Tenth Judicial District will seek to bring victim and offender together in the same room, face to face, to try to repair the harm that has been done. The program will seek to allow the victim to explain how they have been harmed, to allow the offender to take responsibility for the harm and then allow for the parties, as well as other family and community members, to arrive at a solution that will repair the harm which has been done.

Rule 1. Initiating a mediation - Cases may be referred to mediation in three ways:

- a. The juvenile intake counselors in the Tenth Judicial District may refer cases which the juvenile intake counselors deem appropriate for mediation to the administrator of the juvenile mediation program.
- b. For cases which have been petitioned to court, the district attorney or designee responsible for juvenile cases in the Tenth Judicial District, in agreement with the juvenile's defense attorney, may refer cases which the district attorney or designee deems appropriate for mediation to the administrator of the juvenile mediation program.
- c. For cases which have been adjudicated by the court, the presiding judge, as a part of the disposition, may refer the case to the administrator of the juvenile mediation program.

Referrals shall be made by delivering a referral form via electronic transfer, U.S. Mail or hand delivery, to the administrator of the juvenile mediation program. Final approval for acceptance of a case for mediation shall lie with the administrator of the juvenile mediation program.

Rule 2. Time frame and notice for mediation - Within five (5) days of receipt of a referral for mediation, the administrator of the juvenile mediation program shall attempt to contact by phone or letter the juvenile, the juvenile's parents, guardians or caretakers and the victim that the case has been referred for mediation. After a separate, private and personal consultation with the parties, the administrator shall determine if the case is appropriate for mediation. If the case is appropriate, the mediation shall occur within 30 days of the initial referral. For good cause shown, the administrator may extend the thirty-day time requirement. If the parties cannot abide by the time and location requirements, or if the administrator determines the case is not appropriate for mediation, the administrator shall refer the case back to the referring party.

Rule 3. The mediation conference - The mediation conference shall be held at a time and place designated by the administrator. The administrator shall designate a mediator to conduct the conference. Attendees at the conference shall be the mediator, juvenile, a parent, guardian or caretaker of the juvenile, the victim, and any other person designated by the administrator. The mediator shall explain the procedure for conducting the mediation to the attendees. The mediator shall facilitate discussion between the attendees in an effort to fully examine the situation, with the goals of the mediation to be for the parties to have full and open dialogue about the situation and hopefully reach an agreement that repairs the harm. If the parties reach an agreement, the mediator shall reduce the agreement to writing, have it signed by all parties attending the mediation and provide a copy of the Agreement to those parties. In addition, all parties involved in the mediation process will sign a Juvenile Delinquency Consent to Mediation and Confidentiality Statement and receive a signed copy of such form prior to mediation.

Rule 4. Procedure after the mediation conference - Within five (5) days of completion of the mediation conference, the administrator will send a copy of a Report of Mediator to the juvenile intake counselor. If the parties to a mediation conference reached an agreement, the administrator shall attach a copy of such agreement to the Report of Mediator. It shall be the duty of the juvenile intake counselor to monitor the agreement to ensure the agreement is fulfilled within the prescribed time contained in the agreement, not to exceed six (6) months from the date of referral. At such time as the intake counselor determines the agreement has been fulfilled, the intake counselor may close the case or take other action which the counselor feels is appropriate. At such time as the intake counselor determines the agreement has not been fulfilled, the intake counselor shall make a decision as to what type of further action is required.

In the event the case was originally referred to mediation by the district attorney, the intake counselor shall notify the district attorney as to whether the agreement has been fulfilled. If the agreement has been fulfilled, the district attorney may dismiss the case or take other action as deemed appropriate by the district attorney. If the agreement has not been fulfilled, the district attorney shall calendar the case for further court action.

In the event the case was referred to mediation as a part of a court disposition, any agreement reached in mediation shall not be deemed to be a condition of the juvenile's probation.

Rule 5. Confidentiality - Except as otherwise referred to in these rules, a mediator shall not disclose, directly or indirectly, to any non-party, or non-attende of the mediation conference, any information communicated to the mediator by a party or attendee within the mediation process.

A mediator shall not disclose, directly or indirectly, to any party or attendee to the mediation conference, information communicated to the mediator in confidence by any other party or attendee, unless that party and attendee give permission to do so. A mediator may encourage a party and attendee to permit disclosure, but absent such permission, the mediator shall not disclose.

Evidence of statements made and conduct occurring in a juvenile mediation conference shall not be subject to discovery and shall not be admissible in any proceeding in the case or other cases arising out of the same occurrence. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a juvenile mediation conference.

No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a juvenile mediation conference.

Notwithstanding the above stated rule, the mediator has discretion to report otherwise confidential information to a party, non-party, or law enforcement personnel in the following circumstances:

- a. The mediator is under a statutory duty to report the confidential information when the mediator has reason to believe that a child or elder has been or may be abused.
- b. A party to the mediation has communicated to the mediator a threat of serious bodily harm or death to be inflicted on any person, and the mediator has reason to believe the party has the intent and ability to act on the threat.
- c. A party to the mediation has communicated to the mediator a threat of significant damage to real or personal property and the mediator has reason to believe the party has the intent and ability to act on the threat.
- d. A party's conduct during the mediation results in direct bodily injury or death to a person.

Notwithstanding the above stated rules, the law student mediators have discretion to report otherwise confidential information to the administrator of the juvenile mediation program in order to gain assistance and direction in the performance of the mediator's duties and the administrator and law student mediators have discretion to disclose otherwise confidential information to other law student mediators to enhance the educational processes of the juvenile mediation program.

Nothing in these rules shall restrict a juvenile's right to trial by a judge or jury.

The Administrator of the Juvenile Mediation Program is:

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Raleigh, NC 27603
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These rules become effective September 1, 2009.

Date: _____

Robert B. Rader, Chief District Court Judge

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