

**TWELFTH JUDICIAL DISTRICT
SUPERIOR COURT DIVISION
CIVIL CASE MANAGEMENT PLAN**

II. MEDIATED SETTLEMENT CONFERENCE RULES

Adopted March 9, 1999

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Mediation Rules

RULE 1. MEDIATED SETTLEMENT CONFERENCE ORDER

1.1 By order of the Senior Resident Superior Court Judge all civil actions, except as set out in [Rule 2.1\(c\)](#) below, filed in the Superior Court for the Twelfth Judicial District, are subject to a Mediated Settlement Conference conducted pursuant to G.S. § 7A-38 and the Rules of the North Carolina Supreme Court.

RULE 2. TIME OF SELECTION

2.1 A civil action shall be designated for a court ordered mediated settlement conference once the Trial Court Administrator has made the following determination:

- (a) The action has been on file for 120 days or more;
- (b) The parties have not previously placed the civil action in voluntary mediation;
- (c) The action does not involve:
 - The issuance of an extraordinary writ;
 - An appeal of the revocation of a motor vehicle operator's license;
 - The determination of a declaratory judgment action.
- (d) The case involves a Medical Malpractice action and the court has signed a Discovery Scheduling Order.

RULE 3. NOTICE TO PARTIES

3.1 Notice of selection for a mediated settlement conference shall be provided by the Trial Court Administrator to all counsel/unrepresented parties on the *Notice of Calendar Setting Conference and Selection for Mediated Settlement Conference*.

RULE 4. CASE EXEMPTION

4.1 A party may move in writing, within 10 days after the date of the notice of selection for mediated settlement conference, to exempt a case from mediation. Such written *Motion To Dispense With Mediated Settlement Conference* shall state the grounds for the relief sought and shall be provided to the Trial Court Administrator. [*The Motion To Dispense With Mediated Settlement Conference* shall be on form [CCLF-CV-005](#) as prepared and distributed by the Trial Court Administrator's Office, or in letter form which essentially provides the same information]. Service of the motion on opposing counsel/unrepresented parties shall be indicated on the motion. Any objection to the motion by opposing counsel/unrepresented parties shall be in compliance with [Rule 9.3](#) of the Superior Court Case Management Plan. Ruling on the motion shall be made without a hearing, and notice of the ruling shall be provided to

counsel/unrepresented parties indicated on the notice. A case may not be exempted from mediation by:

- (a) The mediator;
- (b) The counsel/unrepresented parties by agreement among themselves.

RULE 5. VOLUNTARY MEDIATION

5.1 Prior to notice of case selection for a court ordered mediation settlement conference, all counsel/unrepresented parties may agree to hold a voluntary mediated settlement conference by providing a written motion to the Trial Court Administrator, along with a consent order for signature. Notice of consent to hold voluntary mediation and the selection of the mediator by agreement of parties shall be in compliance with [Rule 6.1](#) set forth below. Said consent order may require holding of a mediated settlement conference at a time earlier than the time specified in [Rule 7.3](#) set forth below.

RULE 6. SELECTION OF A MEDIATOR

6.1 The parties may elect to select a mediator by agreement, or request court approval of a non-certified mediator within 21 days after the date of notice of case designation for mediated settlement conference.

6.2 A mediator selected by agreement of the parties shall be certified pursuant to Rule 8 of the North Carolina Rules of Court Implementing Mediated Settlement Conferences. Notice of designation of a mediator by agreement of all the parties shall be provided to the Trial Court Administrator, and the content of the notice shall be in compliance with Rule 2A of the North Carolina Rules of Court Implementing Mediated Settlement Conferences.

- (a) A request to select a non-certified mediator shall be provided by the parties to the Trial Court Administrator. The content of the Nomination of a Non-certified Mediator Notice shall be in compliance with Rule 2B of the North Carolina Rules of Court Implementing Mediated Settlement Conferences and shall further contain the names and addresses of all parties. Ruling on the nomination shall be made without a hearing, and provided to the parties as indicated on the notice.

6.3 If the parties cannot agree, a mediator shall be selected at the time of the calendar setting conference by the Trial Court Administrator.

- (a) Selection of the mediator shall be made by random selection from the list of qualified mediators provided in the Mediation Information Directory, and who have made known to the court that they wish to mediate cases in this district.
- (b) An exception to the random selection rule may be made, if the Trial Court Administrator finds that another mediator has special qualifications to mediate a particular dispute. All parties should be prepared at the time of the calendar setting conference to state preferences relating to the appointment of a mediator and the reason(s) for the request.

6.4 Any party may move for the disqualification of the appointed mediator for good cause. The motion to disqualify a mediator shall be in written form, and provided to the Trial Court Administrator.

- (a) Disqualification of a mediator shall not extend the mediation deadline date already established.
- (b) Upon the disqualification of the mediator, the party filing the motion to disqualify shall notify all parties, to include the disqualified mediator.

RULE 7. TIME STANDARDS

7.1 At the calendar setting conference the Trial Court Administrator shall:

- (a) Appoint a mediator;
- (b) Establish a deadline for the completion of the mediated settlement conference;
- (c) Rule on any request to exempt a case from mediated settlement conference.

7.2 Immediately after the calendar setting conference, the Trial Court Administrator shall provide written notice to all parties providing the name of the appointed mediator and the established deadline for completion of the mediated settlement conference.

7.3 The mediated settlement conference shall be completed no later than thirty (30) days prior to the trial date established at the calendar setting conference.

- (a) Any motion to extend the deadline for a mediation settlement conference shall be made in writing, served on opposing counsel/ unrepresented parties and delivered to the Trial Court Administrator. In no event will the mediation completion deadline be extended past the established trial date.

7.4 The mediated settlement conference shall not be a basis for the delay of other proceedings including the completion of discovery, the filing of hearing of motions, or the trial of the case.

RULE 8. MEDIATED SETTLEMENT CONFERENCE

8.1 The mediated settlement conference shall be held at a time and in a place agreed upon by all parties and the mediator.

- (a) In the absence of an agreement, the mediation conference shall be held in the courthouse or other neutral public or community building in the county where the case is pending;
- (b) In the absence of an agreement, the date and time of the mediation conference shall be established by the mediator; The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice to all parties of the time and location where the conference will be held.

8.2 The mediator may recess the conference at any time and may set times for reconvening, provided such additional session(s) does not delay the established trial date. No further notification will be required for parties who are present at the recessed conference.

8.3 Upon reaching an agreement at the mediated settlement conference, the parties shall immediately reduce the agreement to writing and sign it along with counsel. By stipulation of the parties, the agreement may be electronically or stenographically recorded. A consent judgment or one or more voluntary dismissal(s) shall be filed with the court by such persons as the parties shall designate.

RULE 9. AUTHORITY AND DUTIES OF MEDIATOR

9.1 The mediator shall at all times be in control of the conference and the procedures to be followed during the conference.

9.2 The mediator shall define and describe the following to the parties at the beginning of the conference:

- The process of mediation.
- The difference between mediation and other forms of conflict resolution.
- The costs of the mediated settlement conference.
- The fact that the mediated settlement conference is not a trial, the mediator not a judge and the parties retain the right to trial if they do not reach settlement.
- The circumstances under which the mediator may meet alone with either of the parties or with another person.
- Whether and under what conditions communications with the mediator will be held in confidence during the conference.
- The inadmissibility of negotiating conduct and statements at trial.
- The duties and responsibilities of the mediator and the parties.
- The fact that any agreement reached will be reached by mutual consent of the parties.

9.3 The mediator may meet and consult privately with any parties or counsel during the conference.

9.4 The mediator has the duty to:

- (a) Be impartial and to advise all parties of any circumstances bearing on possible bias, prejudice or partiality.
- (b) Timely determine when mediation is viable, that an impasse exists, or that mediation should end.

9.5 The mediator shall report to the Trial Court Administrator the results of the mediated settlement conference ordered in each civil action within fifteen (15) working days of the completion of the conference. The report shall be filed in writing with the court on a form entitled *Report Of Mediator* and provided to the Trial Court Administrator. The report shall include but is not limited to notice that the conference was not held, or if the conference was held whether or not an agreement was reached by the parties. *[The Report Of Mediator shall be on form AOC-CR-813 as prepared and distributed by the Administrative Office of the Courts.]*

- (a) If an agreement was reached, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the person designated to file such document(s) with the court and when such documents will be filed.
- (b) The mediator shall also report when all parties have paid their share of the mediator's fee.

RULE 10. PARTICIPATION OF PARTIES, ATTORNEY(S) AND OTHER PARTICIPANTS

10.1 All parties to civil actions filed in the Superior Court are required to attend the Mediated Settlement Conference, to include:

- (a) All individual parties, or an officer, director or employee having authority to settle the claim for a corporate party, or in the case of a governmental party, a representative of that agency with full authority to negotiate on behalf of the agency and to recommend settlement to the appropriate decision making body of the agency; and
- (b) The party's counsel of record, if any; and
- (c) A representative of the insurance carrier(s) for any insured party against whom a claim is made. Said representative must be someone other than the carrier's outside counsel, and must have authority to settle without further consultation.
- (d) "*Attend*" is defined as actually being physically present during all significant portions of the settlement conference.

10.2 A party or person may be excused from all or part of the mediated settlement conference:

- (a) By the mediator with approval of all the parties and attorneys.
- (b) By the court, upon written motion provided to the Trial Court Administrator soon as the party(ies) become aware of the reason for the request to be excused. Notice shall be provided to all parties and persons required to attend the conference prior to the delivery of the request to the Trial Court Administrator. Ruling on the motion shall be made without hearing and provided to the parties indicated on the notice.
 - (1) No motion shall be granted without sufficient time for the Trial Court Administrator to provide notice to all parties prior to the mediation.

RULE 11. COMPENSATION OF THE MEDIATOR

11.1 Compensation of the mediator shall be made as follows:

- (a) When the mediator is selected by agreement of the parties, his or her rate of compensation shall be as agreed upon between the parties and the mediator.
- (b) When the mediator is appointed by the Court, the mediator shall be compensated by the parties at the hourly rate and a one time, per case administrative fee as set by statute in Rule 7(B) of the North Carolina Rules of Court.
- (c) Payment for services rendered by the mediator shall be made directly to the mediator immediately on the presentation of a statement at the conclusion of the

conference. The mediator's fee shall be paid as follows: one equal share by the Plaintiffs, one equal share by the defendants, and one equal share by any third party Defendants, unless otherwise ordered by the Court or agreed by the parties.

- (d) If any party contends he/she is an indigent and cannot pay his/her portion of the mediator's fee, that person may file a petition entitled Petition and Order For Relief From Obligation To Pay Mediator's Fee with the mediator to be relieved of payment of such fee at the conclusion of the conference. The petition shall be attached to the Report of the Mediator and filed with the Trial Court Administrator. *[The Petition and Order For Relief From Obligation To Pay Mediator's Fee shall be on form AOC-CR-814 as prepared and distributed by the Administrative Office of the Courts.]* Thereafter, the Senior Resident Superior Court Judge shall determine whether the movant is unable to pay his or her share of the mediator's fee, and if he so finds, shall enter an order granting the relief sought. Said motion shall be heard subsequent to the completion of the conference, or if the parties do not settle their case, subsequent to the trial of the action. The court may take into consideration the outcome of the action and whether a judgment was rendered in the movant's favor.
- (e) It is the responsibility of counsel to notify client(s) of their payment obligation for the mediated settlement conference, and insure that the mediator receives payment at the time of the conference.
- (f) Except when remitted by the court, failure of a party to make timely payments of their share of mediator's fee shall constitute contempt of court and may result in the imposition of any and all lawful sanctions as set forth in [Rule 13](#) below.

RULE 12. NOTICE OF SETTLEMENT

12.1 Notice of settlement of the case shall be provided to the Trial Court Administrator pursuant to [Rule 11.1](#) of the Superior Court Division Civil Case Management Plan; I. Civil Calendaring Rules.

12.2 Notice of settlement of a case that has been designated for a Mediated Settlement Conference, prior to the scheduled date of the Mediated Settlement Conference, shall also be provided to the mediator.

RULE 13. SANCTIONS

13.1 Failure of any party to attend a mediated settlement conference, or to otherwise comply with these rules without good cause, shall subject the party or his principal to any lawful sanctions deemed appropriate by the court, including but not limited to the payment of fines, attorney fees, mediator fees, expenses and loss of earnings incurred by persons attending the conference, contempt or any other sanction authorized by Rule 37(b) of the Rules of Civil Procedure.

13.2 Failure on the part of any person or entity covered by the rules to comply with any of the specific provisions provided above shall subject that person or entity to any sanctions deemed appropriate and allowed for by law.

RULE 14. FORMS

14.1 Forms for use by counsel/unrepresented parties and mediators in accordance with the rules governing mediated settlement conferences are produced and distributed by the Administrative Office of the Courts, and are subject to change as legislation and/or policy dictates.