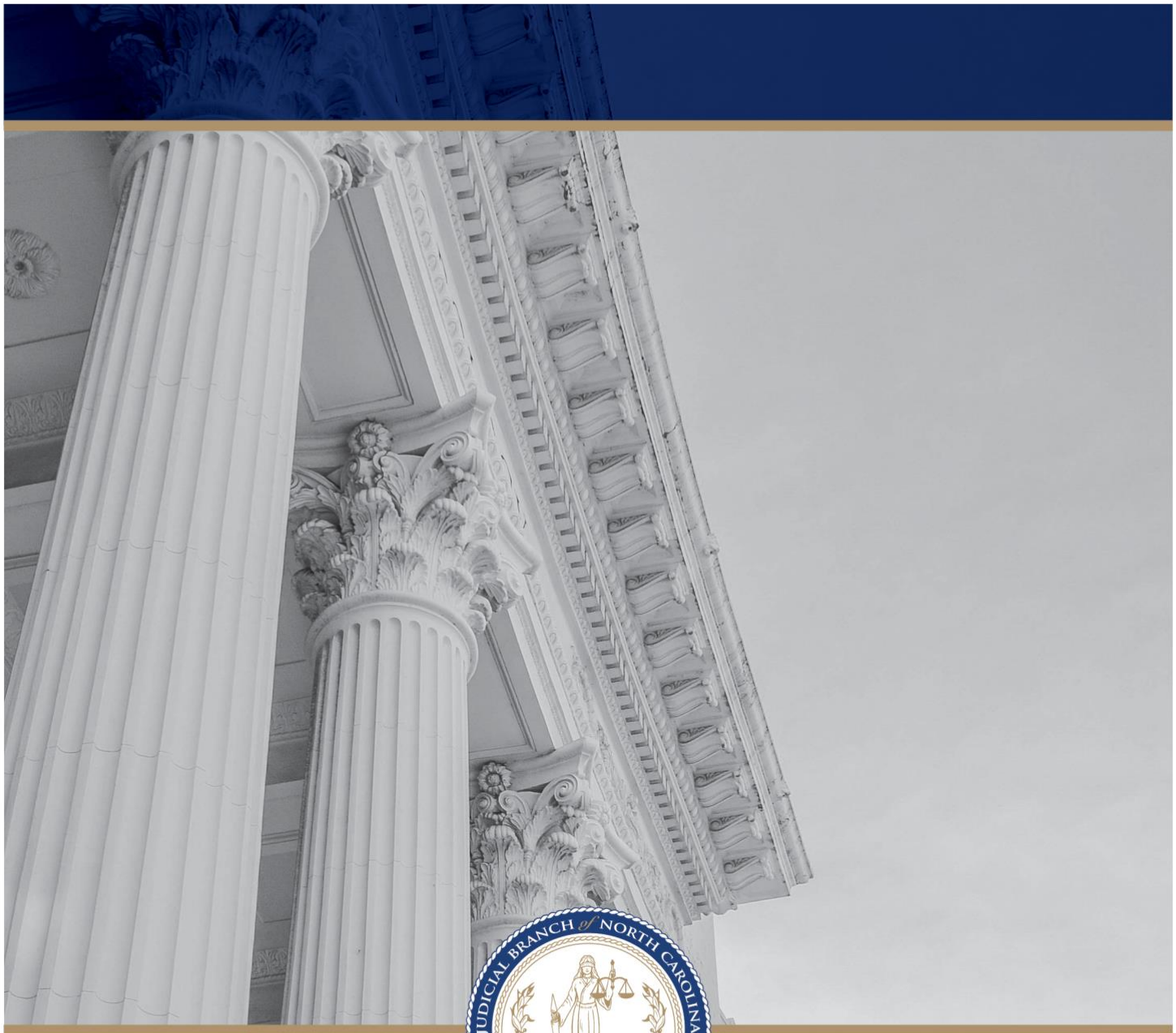


# NORTH CAROLINA ADMINISTRATIVE OFFICE *of the* COURTS

## PERMANENCY MEDIATION PROGRAM UNIFORM RULES

AUGUST, 2025

**1. STATUTORY AUTHORITY.**

**N.C.G.S. 7B-202** authorizes the North Carolina Administrative Office of the Courts (NCAOC) to (1) establish a Permanency Mediation Program to provide statewide and uniform services to resolve issues in juvenile abuse/neglect/dependency cases, (2) establish a statewide program in phases, in local court districts, and (3) promulgate policies and regulations necessary and appropriate for the administration of the program.

> Comment: *Legislation in G.S. 7B-202 establishing Permanency Mediation in North Carolina requires that the NCAOC "establish a Permanency Mediation program" in phases statewide and to "promulgate policies* ***and regulations necessary and appropriate for the administration of the program."***

**N.C.G.S. 7B-909.2** provides that prior to executing a relinquishment of a child for adoption, the parent(s) of a minor who is in the custody of the county department of social services (DSS) and the prospective adoptive parent(s) may voluntarily participate in a court-approved mediation program to reach a voluntarily mediated post-adoption contact agreement. The court with jurisdiction over the proceeding involving the minor may make the referral to mediation when the county department of social services (DSS) notifies the court that it would accept a relinquishment that specifies the prospective adoptive parents.

**2. PURPOSE OF PROGRAM.** The North Carolina Permanency Mediation Program is to provide a collaborative, problem-solving process facilitated by a trained mediator in an effort to resolve cases in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent's parental rights has been filed.

**3. DEFINITIONS.**

**3.01. Mediator.** A party who is employed by the North Carolina Administrative Office of the Courts (NCAOC) to perform permanency mediation services.

**3.02. Permanency Mediation Agreement.** Any agreement reached by the parties as a result of the mediation, whether referred to as a "placement agreement," "case plan," or some similar name, which is reduced to writing, signed by each party, and submitted to the court as soon as practicable.

**3.03. Post-Adoption Mediated Contact Agreement.** A voluntarily mediated agreement reached by the designated parties, approved by a district court judge and incorporated into a district court order, that allows specifically described post-adoption contact with a child, including visitation, sharing of information, and communication such as the exchange of letters, electronic communication, and telephone contact. The agreement is submitted to the court as soon as practicable after it is reduced to writing and signed by the parties under oath. (Note: The court must review the agreement within two business days of when the agreement is signed to determine whether to enter an order incorporating the agreement.)

**4. GOALS.** The goals of permanency mediation are to:

1. Provide a non-adversarial, structured, confidential setting conducive to the productive exchange of information between the parties.

2. Facilitate the co-operative resolution of the referred issues.

3. Expedite the permanent placement of children within the Adoption and Safe Families Act (ASFA) guidelines.

4. Improve the participants' understanding of the nature and purpose of the juvenile proceeding and their available options.

5. Improve the quality of case plans by making them more realistic, understandable, and measurable, and by having the parents as well as the social workers assume responsibility for formulating the plans.

6. Achieve increased specificity of case plans which will allow for earlier assessment as to whether goals are reached or need to be changed.

7. Increase participant satisfaction with the process.

8. Reduce the number and length of court hearings.

9. Reduce the re-litigation of issues and the likelihood of delays caused by appeals.

**5. ADMINISTRATION.** The Permanency Mediation Program shall be administered by NCAOC Court Programs Manager of the Child Custody and Visitation/Permanency Mediation Program.

**6. LOCAL ADMINISTRATION.** It is the responsibility of the referring judge to complete the proper NCAOC forms or provide an order informing the mediator of the issues for mediation, the parameters of an agreement, as well as the names and contact information of all the parties ordered/referred to attend.

The referring judge will assign a staff member or party to the action to coordinate the appointment setting and attending paperwork with the NCAOC Permanency Mediation office.

**7. MEDIATOR QUALIFICATIONS.** Permanency mediations will be led by either:

1. NCAOC Custody Mediators who possess the qualifications per § 7A-494 and who have successfully completed the additional training requirements outlined in the next section or

2. Mediators the NCAOC has contracted with to provide permanency mediation.

In order to be eligible for contractual work as a permanency mediator with the NCAOC, a person must meet the following minimum requirements:

1. Not be convicted, within ten years of the contract of a violent felony (Class A-E), a Class A1 misdemeanor, or a crime involving moral turpitude.

2. Possess one of the following: (a) a master's or doctoral degree in psychology, social work, counseling, marriage and family therapy, or another behavioral science related to family relationships, family development, or child development from an accredited college or university, or (b) a Juris Doctorate from an accredited college or university.

3. Have at least three (3) years work experience as an attorney, judicial officer, a mediator, or a therapist. Experience in a setting related to juvenile dependence or family relations is preferred.

4. Complete a 40-hour family mediation training approved by the NCAOC.

5. Complete the NCAOC permanency mediation training period prior to or within four months of beginning practice as a permanency mediator.

6. Attend in-service training and continuing education in permanency mediation as specified by the NCAOC.

**8. MEDIATOR TRAINING PERIOD.** The mediator shall satisfy the following requirements for training and mentoring before mediating solo or assuming the lead mediator role during a mediation session:

1. 12 hours of permanency mediation training in a program approved by the NCAOC

2. 15 hours of co-mediation as "second chair"

3. Participation in post-mediation debriefings with mentor

4. Official assessment and approval of knowledge, skills, and performance of permanency mediation conducted by NCAOC staff

**9. CAPACITY.** While the aim of the NCAOC Permanency Mediation Program is to provide mediation for all referred cases that are appropriate for mediation, the program will develop in manageable stages that align with available resources. The program manager will refer cases back to court when unable to provide mediation in a timely manner due to limited resources.

**10. COMPLAINT PROCEDURES.** If a party has a complaint against either the mediator or the mediation process, the complaint must be submitted in writing, signed by the complainant, and mailed or delivered to the Chief District Court Judge of the judicial district. The Chief District Court Judge will review the complaint and respond in writing to the complainant within sixty (60) days of receiving the complaint.

**11. ADVISORY COMMITTEE.** The Custody Mediation Advisory Committee, established by the Director of the NCAOC, shall advise the NCAOC on matters of the Permanency Mediation Program

## PERMANENCY MEDIATION PROCESS[1] (N.C.G.S. 7B-202)

Upon motion of any party or upon the Court's own motion, the Court may order parties in a case to participate in permanency planning mediation as outlined below.

Additionally, a court with jurisdiction over a proceeding involving a minor in the custody of the DSS may make a referral to a court-approved mediation program for a post-adoption contact agreement and order in accordance with N.C.G.S. 7B-909.2.

**1. ISSUES FOR MEDIATION.** At this phase of program implementation, cases may be ordered to mediation from the permanency planning stage forward.

**1.01. Visitation.** According to N.C.G.S. 7B-905.1(d) For resolution of issues related to visitation the court may order the parents, guardian, or custodian to participate in custody mediation where there is a program established pursuant to N.C.G.S. 7A-494.

Visitation issues may be referred to mediation prior to the entry of a permanent order or upon a motion for review where the court has retained jurisdiction. The referring judge will complete form AOC-J-135 in order to outline the parameters of an allowable agreement. The local custody mediation office will then contact the NCAOC Permanency Mediation Office for assignment of trained mediators.

**1.02. Other Permanency Issues.** Any issues that may facilitate permanence for a child, such as case planning, modifications of case plans, communication, permanent placement, voluntary relinquishment, etc., may be ordered to permanency planning mediation.

Should voluntary relinquishment and adoption be part of the discussion, the mediator will advise the parties to discuss the option of post-adoption contact with their counsel. The issue can be addressed in accordance with the procedure for the mediation of post-adoption contracts set out

[1] See pp. 7-9 for post-adoption mediated contact agreement mediation process.

below, if the parents and adoptive parents agree and DSS notifies the court that they would accept a relinquishment that specifies the prospective adoptive parent.

**2. PARTICIPANTS.** All parties and their attorneys shall attend court-ordered permanency mediation. Other individuals whose input may be helpful may be invited to attend by the parties or attorneys but are not required to attend. These individuals may participate in the session only at the discretion of the mediator(s) and if agreed upon by the parties, their attorneys, or by order of the court.

Parties and attorneys who are ordered to attend a mediation session, but who fail to appear, may face court sanctions, including but not limited to, contempt of court.

Only if deemed appropriate by the judge or by the child's attorney advocate, will a child be allowed to participate in some or all of the mediation. Issues to be considered in determining whether a child may participate in mediation include the viewpoint of the parents, the child's age, developmental stage, emotional status, mental health, adjustment level, basic understanding of the mediation process, and post-mediation support. The child's involvement in mediation shall be conducted in a manner designed by the mediator and in consultation with the child's advocate to protect the child's interest and emotional well-being. The child's safety and well-being shall be the primary concern during all mediation sessions.

**3. ASSIGNMENT OF MEDIATORS.** Upon receipt of AOC-J-135 or a court order for permanency planning mediation, the NCAOC Permanency Mediation Program will assign a qualified permanency mediator or mediators. All other orders for permanency mediation will be forwarded by the court or court designee to the Permanency Mediation Office for assignment of qualified mediators.

**4. AUTHORITY OF THE MEDIATOR.** The mediator, with input from the parties or their attorneys, shall determine if the mediation can proceed when a person who has been ordered or invited to attend mediation does not appear. However, a represented parent or caretaker may not participate in mediation without the presence of their attorney or substitute attorney nor can a parent or caretaker participate without the presence of their guardian ad litem if one has been appointed.

During the session, the mediator may release any parties or attorneys, with their consent, if the mediator determines that the session can continue without their presence.

The mediator shall be in control at all times of the mediation process and the procedures to be followed in the mediation. The mediator may excuse a non-party participant when the mediator determines their participation is counter-productive to the mediation. The mediator may suspend the session if it becomes unsafe or counterproductive for any of the participants.

At the time of scheduling, any participant shall notify the mediator or the NCAOC Permanency Mediation Office of any known history of family violence or mental health issues. The mediator will assess the appropriateness of mediation. If a party's capacity to meaningfully participate in mediation is severely

limited due to mental illness, substance abuse, or the overwhelming imbalance of power resulting from family violence, the mediator will ask the presiding judge to waive the case from mediation.

The mediator shall include all parties to any communication with the judge.

**5. THE MEDIATION SESSION.** Permanency mediations will be conducted primarily via online video conference. For ease of caucusing, lawyers will aim to appear for the meeting in the same physical room and on the same screen with their clients.

A co-mediation model shall be used in all court-ordered permanency cases unless the NCAOC approves a single mediator session in advance. Mediation shall include the following steps:

- Intake and assessment process
- Orientation of the parties to the process
  Discussion and agreement on agenda and/or issues to be discussed
- Caucus sessions as appropriate
- Written agreement and/or termination of the process

If the mediation process requires more than one session, to which the parties agree to attend, then no party or counsel may approach the court between sessions on any matter referred to in mediation unless an emergency arises regarding the child(ren). Participation in mediation is not to be used to delay the court process.

If paternity is not established prior to the mediation session and if a father named in the petition does not intend to acknowledge paternity prior to the scheduled mediation, then that father and his attorney may not enter into a mediated agreement regarding the petition or case plan, unless approved by the court.

Although parties may be ordered to attend mediation, there shall not be any punitive measures taken by the court or service providers if a mediated agreement is not reached.

If an agreement is reached, the mediators will, as often as possible, draft a written agreement while all parties and attorneys are present at the mediation. The mediator will destroy any notes immediately after mediation or after writing the agreement if an agreement was not completed during the mediation session.

The parties may agree to use electronic signatures to facilitate execution of the mediated settlement agreement. The parties shall receive a copy of the signed agreement. The attorney for DSS, or another individual identified by the parties, will submit the agreement to the court for consideration. The court shall determine whether the mediated agreement will become a court order.

**6. CONFIDENTIALITY.** Mediation proceedings shall be held in private and shall be confidential in accordance with N.C.G.S 7B-202. All participants shall receive a copy of the confidentiality clause prior to

mediation. The mediator will review the terms of confidentiality with the parties during the intake or orientation process and field any questions. All participants, including mediators, shall honor the confidentiality provisions regardless of the outcome of the mediation. All verbal or written communications from participants in the mediation to the mediator or between or among the participants in the presence of the mediator are absolutely privileged and inadmissible in court.

**EXCEPTION:** There is no confidentiality or privilege as to communications made in furtherance of a crime or fraud. Nothing herein shall permit an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of the North Carolina General Statutes, Section 7B-301 or 108A-102.

## PERMANENCY MEDIATION PROCESS FOR POST-ADOPTION CONTACT MEDIATION (N.C.G.S. 7B-909.2)

Pursuant to N.C.G.S. 7B-909.2, prior to executing a relinquishment of a child for adoption, the parent(s) of a minor who is in the custody of DSS pursuant to a court order entered under Subchapter I of Chapter 7B of the General Statutes and the prospective adoptive parent(s) of the minor may voluntarily participate in a court-approved mediation program to reach a post-adoption mediated contact agreement. The court with jurisdiction over the proceeding involving the minor may make the referral to mediation when DSS notifies the court it would accept a relinquishment that specifies the prospective adoptive parents.

**1. REFERRAL.** The court will complete AOC form AOC-J-214 to initiate the referral to the NCAOC Permanency Mediation Program for mediation of a post-adoption mediated contact agreement.

**2. ASSIGNMENT OF MEDIATORS.** One or two qualified mediators will be assigned by the program manager or designee. The mediator(s) will schedule the session to be held as soon as possible and no later than three weeks from the date of receiving the referral.

**3. CONFIDENTIALITY.** Mediation proceedings and information relating to the proceedings are confidential pursuant to N.C.G.S 7B-909.2. All participants shall receive a copy of the confidentiality clause prior to mediation. The mediator will review the terms of confidentiality with the parties and field any questions. All participants, including the mediators, shall honor the confidentiality provisions regardless of the outcome of the mediation. Information or statements of any person participating in the mediation shall not be disclosed or used in any subsequent proceedings unless otherwise authorized by law.

**4. THE MEDIATION SESSION.** The mediation session(s) will be conducted via video conference unless a) the parties consent to meet in-person and b) a mediator is able to accommodate this request. Any in-person sessions will be held in the custody mediation office in a court facility.

A mediation session may last up to three hours. A session will only extend beyond three hours at the request of the parties to the mediation and the discretion of the mediator. Additional sessions may be scheduled at the request of all parties to the mediation and at the discretion of the mediator.

The mediator will caucus at least once with each party during a mediation session. If an agreement is reached, and even if a caucus was already conducted, the mediator will caucus again to ensure that both parties feel comfortable with the terms of the agreement.

**5. PARTICIPANTS.** Parents and prospective adoptive parents who are referred to mediation by the court to discuss post-adoption contact attend voluntarily. Other individuals may be invited to participate in the mediation by mutual consent of the parent(s) executing a relinquishment and the prospective adoptive parent(s). Invited attendees are not parties to any agreement reached during mediation and shall not receive a copy of any agreement.

Minor biological parent(s) have legal capacity to participate in mediation and enter post-adoption contact agreements and be bound by the agreement.

The parents' and prospective adoptive parents' attendance is voluntary. A party may decide not to attend or may leave the session at any point. This decision will not be used against any party by the court or service providers.

**6. AGREEMENT.** Any agreement reached by the parties shall include the following statements:

1. This agreement is entered into pursuant to this section N.C.G.S. 7B-909.2(g).

2. Any breach, modification, invalidation, or termination of the agreement, or any part of it, shall not affect the validity of the relinquishment or the final decree of adoption.

3. The parties acknowledge that either the parent or prospective adoptive parents who have entered into the agreement have the right to seek enforcement as set forth in N.C.G.S. 7B-909.3.

4. The parties have not relied on any representations other than those contained in the agreement.

5. A post-adoption contact agreement and order automatically terminates on the date the child turns 18 years of age or is otherwise emancipated.

6. Any future court-imposed modification of their agreement may limit, restrict, condition, decrease, or terminate the sharing of information and contact between the former parent or parents and the child, but in no event shall a court-imposed modification serve to expand, enlarge, or increase the amount of contact between the former parent or parents and the child.

The agreement will not exceed the limitations of Article 9A of Subchapter I of Chapter 7B of the General Statues[2] and shall contain as much specificity as possible regarding post-adoption contact.

The mediator will draft the agreement during the session and review the agreement with the parties.

The mediator will destroy any notes immediately after mediation is concluded.

**7. AGREEMENT SIGNATURES.** The mediator will explain that to be approved by the court, the agreement must be signed under oath or accompanied by an affidavit that states that the agreement was entered into knowingly and voluntarily and is not the product of coercion, fraud, or duress. The signatures and affidavits may be executed jointly or separately.

**8. MODIFICATIONS, ENFORCEMENT, AND TERMINATION.** The mediator will explain to the parties that any future court-imposed modification of their agreement may limit, restrict, condition, decrease, or terminate the sharing of information and contact between the former parent or parents and the child, but in no event shall a court-imposed modification serve to expand, enlarge, or increase the amount of contact between the former parent or parents and the child.

Court approved post-adoption contact agreements are court ordered civil child custody determinations. If a party to the agreement seeks to modify, enforce, or terminate the agreement, the party must file a motion in the civil action containing the court order.

The issues set forth in the motion will be set for custody mediation unless waived by the court for good cause.

[2] See Article 9A of Subchapter I of Chapter 7B of the General Statutes. (G.S. 7B-909.2 et seq.)