



ADVISORY OPINION OF THE THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Advisory Opinion Number 43 (2022)

(Adopted and Issued by the Commission on September 30, 2022; Amended September 20, 2024 and March 6, 2026.)

Mining Metadata and Recording the Conference, Rule 4 And The Use of Artificial Intelligence During a Remote Mediation

The mediator or a party to a mediated settlement conference shall not mine metadata from a mediated settlement conference or record the mediated settlement conference. The mediator is responsible for ensuring Artificial Intelligence (AI) is not operational during a remote mediated settlement conference.

Concerns Raised

Mediator contacted the Dispute Resolution Commission (Commission) to ask if the metadata from a remote mediation could be retrieved, by any person or party, after the conclusion of a mediated settlement conference.

Mediator asked if AI can be used during remote mediations to make a record or summary of the conference.

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May a person retrieve, or use any data or metadata related to the mediation process that has been created or stored by remote technology providers?

No.

Rule 4(f) of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Actions; Rule 4(e) of the Rules for Settlement Procedures in District Court Family Financial Cases; Rule 4(d) of the Rules of Mediation for Matters Before the Clerk of Superior Court; Rule 4(e) of the Rules of Mediation for Matters in District Criminal Court; and Rule 5(b)(5) of the Rules for Mediation for Farm Nuisance Disputes (the Rules) all provide the following language, “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.”

Metadata is data that provides information about other data. The metadata recorded on a device may be used for identification and discovery of parts of a record. Metadata can include a title, abstract, author, date, keywords, contents, quality of statistical data, characteristics of digital materials, information about the creator, copyright holder, and public licensing. It is possible the text of a message (such as messages in a Chat feature), closed captioning record, or an image in the metadata contains confidential information. Metadata may be stored in the same file or structure as the data, as embedded or internal metadata, or it can be stored in a separate file or field from the described data. Regardless of the form, content, or storage location, metadata from a mediated settlement conference shall not be accessed or retrieved by any person.

The Rules prohibit recording of the conference to enforce the Commission's goal of open conversation between the parties, without fear of retaliation. The Commission continues to uphold the principle that information shared in a mediated settlement conference shall be confidential as to the mediator and the exchange of information between the parties shall not be admissible in court, subject to statutory exceptions.

The Commission recognizes that with some electronic remote communication platforms, data or metadata may be recorded without the knowledge or consent of the mediator or the participants and is beyond their control. However, the Commission cautions the mediator and parties that they may not access such data after the conference is over.

As a best practice, the Commission suggests that, when possible, it is preferred that the mediator use a platform or computer account owned or controlled by the mediator. Then, hopefully, any metadata that is generated or recorded will be in the possession of the mediator and thus not available for searching or mining by parties or their affiliates.

May a person use AI during a mediation to make a record or summary of the conference?

No.

MSC/FFS Rule 4, the mediation shall not be recorded. AI is content creating technology and may not be used to make a record or summary of the conference. The mediator, the parties or their attorneys, may ask AI questions to assist the process, but AI may not be turned on for any part of the conference with the intent of creating a record or summary. It is the Commission's understanding some AI programs have an opt-out feature where AI automatically creates a summary of any remote conference, meeting, or call. When conducting a remote mediation, it is the mediator's responsibility to use the mediator's own remote technology account. The mediator shall take reasonable steps to ensure AI is not operational during a remote mediated settlement conference, including (at a minimum) reviewing their computer's technology settings in advance of the mediation to ensure that recording and AI are disabled.