



ADVISORY OPINION OF THE THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Advisory Opinion No. 44 (2025)

(Adopted and Issued by the Commission on February 28, 2025.)

Mediator Fees, Rule 2(a)(b), 4, & 7.

When a party elects to pay the court-ordered mediator fee by electronic means (Venmo, credit card, PayPal, etc.) the mediator may require the party to cover the delivery or processing fees.

Concern Raised

Mediator contacted the Dispute Resolution Commission (Commission) to ask if a court-appointed mediator may require a party to pay for the delivery fees or payment processing fees (fees), when the party elects to pay the mediator's fee by electronic means (Venmo, credit card, PayPal, etc.).

Advisory Opinion

May a mediator require the party paying the mediators fee by electronic means to also pay the processing fees?

Yes, if the mediator also accepts payment by cash or check.

Under Rule 2(a) of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions (MSC), the Rules for Settlement Procedures in District Court Family Financial Cases (FFS), and the Rules of Mediation for Matters Before the Clerk of Superior Court (Clerk), and under Rule 3(b) of the Rules of Mediation for Farm Nuisance Disputes (Farm), the parties may agree to the selection of and the rate of compensation of their designated mediator.

Under Rule 2(b) of the MSC, FFS, Clerk Rules and Rule 3(c) of the Farm Rules, the court appointed mediator will not charge for travel time and expenses incurred in carrying out their duties associated with the appointment. Also, a court appointed mediator may only charge for fees established in the MSC, FFS, Clerk, and Farm Rules that includes a one-time administrative fee and a capped hourly mediation rate. Thus, the rules minimize the expenses paid by the parties for court appointed mediators, in part, to provide access to justice for individuals of all income levels.

Rule 4 of the MSC, FFS, Clerk, and Farm Rules require the party to a mediation to pay the mediator's fee. Rule 7 of the MSC, FFS, and Clerk Rules, and Rule 6 of the Farm Rules, provides for the payment of compensation by the parties. Thus, if the party elects to pay through electronic

means and the fees assessed for such electronic payment reduce the amount of funds received by the mediator, the party has not paid the mediator in full.

However, the mediator has the discretion to waive or collect the fees associated with receiving their payment. Therefore:

- If a mediator accepts payment methods that do not incur fees, cash or check, they may pass along to the party the fees assessed from electronic payments. If the party elects to use the payment method that carries a fee, that is the party's choice, and the party may be held responsible for the fees.
- The mediator may charge a credit card processing fee up to the amount determined by the North Carolina Administrative Office of the Courts, as published on the following website: <https://www.nccourts.gov/documents/publications/credit-debit-card-payment-processing-fees>.
- If a mediator only accepts payment through electronic means, that is the mediator's choice, and the mediator shall be responsible for the fees.
- If the party elects to pay by check, and the check bounces due to insufficient funds, the court appointed mediator may hold the party responsible for any bank charges incurred in collecting the full amount of their fee.

It is best practice for a mediator who elects to pass along the fees associated with payments to disclose this information prior to the mediation. Prior notice to the parties will allow the parties to determine their elected payment method prior to the beginning of the conference.

A mediator/lawyer should be mindful of the NC State Bar's RPC 247 that authorizes a lawyer to charge the client with "the expense associated with payment by electronic transfer." The amount of processing fees allowed by this Opinion have been set out by the NC Administrative Office of the Court and do not run contrary to RPC 247, so long as the expense being passed to the party is being done in an honest manner, with disclosure, where the mediator/lawyer is not resulting in a profit.

N.C. Gen. Stat. §7A-38.2(b) provides, "[t]he administration of mediator certification, regulation of mediator conduct, and certification shall be conducted through the Dispute Resolution Commission, established under the Judicial Department." On August 28, 1998, the Commission adopted an Advisory Opinions Policy encouraging mediators to seek guidance on dilemmas that arise in the context of their mediation practice. In adopting the Policy and issuing opinions, the Commission seeks to educate mediators and to protect the public.