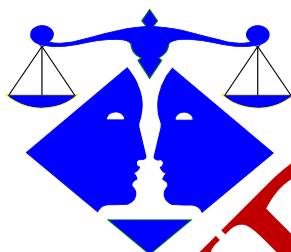


*The DRC is operating all programs under new Rules that provide for remote attendance at all mediated settlement conferences unless all parties and persons required to attend and the mediator consent to attend the conference in-person while complying with safety guidelines, or by order of the Court. The remote attendance rules are temporary and shall revert to physical attendance when COVID-19 is no longer a threat.*

*The new rules conflict with the advice provided in AO 2. Therefore, AO 2 is temporarily suspended until such time the attendance rules revert to physical attendance.*



**Advisory Opinion of the  
NC Dispute Resolution Commission  
Opinion Number 02 (2000)**

(Adopted and Issued by the Commission on August 25, 2000)

N.C. Gen. Stat. §7A-38.2(b) provides, “[t]he administration of the certification and qualification of mediators and other neutrals, and mediator and other neutral training programs 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.

**Concern Raised**

Certified mediator asks for guidance on when a mediator can allow a party or insurance company representative to participate in a mediated settlement conference by telephone.

**Advisory Opinion**

MSC Rule 4(a)(2) provides that any party or person required to attend a mediated settlement conference shall physically attend until an agreement is reduced to writing and signed or an impasse declared. The attendance requirement may be excused or modified by agreement of all parties and persons required to attend and the mediator. As such, a mediator should not consider excusing or modifying the attendance requirement unless all parties and persons required to attend have consented. If a party unilaterally contacts a mediator and requests that the attendance requirement be excused or modified, the mediator should explain the Rule and suggest the party first discuss his or her request with the other parties and persons required to attend the conference.

Whenever possible, the Commission believes it is highly preferable for all parties to be physically present at the conference, including an adjuster or other insurance company representative with authority to settle the case. In that way, parties have an opportunity to hear all the discussions, to come face-to-face with the other side to hear their view of the facts in dispute and their assessment of the case; to be an active participant in formulating offers and counter-offers; and to take ownership of the agreement, including signing it at the conclusion of the conference. When parties are absent, difficulties can occur. For example: a) an absent party may later claim that his or her attorney did not have authority to settle the case; b) an agreement may not be reduced to writing because a party attending by telephone cannot sign and then later repudiates the agreement; or c) an insurance company official with authority to settle and who is to be available on standby may go to a meeting, to lunch, or leave for the day when his or her input is needed most.

The Commission suggests that even when all parties consent, a mediator should not consider waiving or modifying the attendance requirement lightly. Mediators should encourage individual parties and insurance company representatives to be physically

present at the conference, unless some compelling reason dictates otherwise. If there is such a compelling reason, the mediator should seek to ensure that arrangements are made to permit the party to participate via conference call. The party should be able to participate in both general and private sessions with the aid of a speakerphone and to speak confidentially with his or her attorney as needed.

When a mediator learns that a party will not be present physically, the mediator should seek to protect the mediation process by encouraging the attorney to obtain from such client written authorization to settle the matter on the client's behalf. In the event a party fails to physically attend a conference and has not had the attendance requirement excused or modified by agreement of all parties and the mediator or by order of the senior resident superior court judge, MSC Rule 6(b)(4) requires the mediator to report the failure to attend to the court.

SUSPENDED