

OPEN FOR COMMENT UNTIL MAY 28, 2024

Advisory Opinion No. 44 (2024)

(Adopted and Issued by the Commission on xxxxxxxx, 2024.)

Court Appointed Mediator Fees, Rule 2(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.).

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

Advisory Opinion

Under Rule 2(b) 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(c) of the Rules of Mediation for Farm Nuisance Disputes (Farm), 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 court appointed mediator has the discretion to waive or collect the fees associated with receiving their payment. Therefore:

- If a court-appointed mediator accepts payment methods that do not incur fees, cash or check, they may pass along to the party any 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 all fees.

- If a court appointed 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 court appointed 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. The court appointed mediator shall not charge the party paying through electronic means a sum specific, or flat percentage, amount of fees. Rather, the court appointed mediator shall only recover the actual fee amount that is assessed for the funds paid.

A designated mediator's fee agreement may include terms regarding fees for the delivery of funds, processing funds, and/or insufficient funds, but the mediator's compensation, and terms regarding payment, shall be agreed upon by the parties and the mediator.