

## **December 2021 Changes to Appellate Mediation Rules and Procedures Due to COVID-19**

The Court of Appeals previously adopted changes to its mediation program in March 2020 and August 2020 in response to Governor Cooper's emergency orders. Those emergency orders have been lifted and the Court of Appeals has resumed in-person mediation, subject to the conditions listed below. Mediation by remote conference is still an available option for parties.

### 1. General framework for continuing the Appellate Mediation Program

The Court of Appeals mediation program will continue to accept mediation requests and to schedule mediations (either by remote conference or in person) if the mediations can be held in accordance with applicable orders by the Supreme Court to address COVID-19, any guidelines from the Administrative Office of Courts regarding COVID-19 safety, and any applicable State or local restrictions on travel and gatherings. The most recent Supreme Court orders regarding COVID-19 are available on the North Carolina Judicial Branch website, under COVID-19 (Coronavirus) Updates: <https://www.nccourts.gov/covid-19>.

### 2. Mediation Consent Form

Counsel may electronically file the completed Consent Form at <https://www.ncappellatecourts.org/>. Alternatively, counsel may file the completed Consent Form by emailing it to [mediate@coa.nccourts.org](mailto:mediate@coa.nccourts.org) or by mailing it to the Court of Appeals. E-filing is preferred and strongly encouraged.

The Consent Form now requests each party's preference for conducting the mediation, whether by in-person or by teleconference/videoconference ("remote conference"). Parties can also select "no preference." If a party selects "no preference" and another party notes a preference, the mediation will be conducted in the format selected by the party with a preference. If there are more than two parties with no preference or different preferences, the assigned judge will determine the format for the mediation after considering any stated preferences.

### 3. Mediation by current Court of Appeals judges by remote conference or in-person mediation

### In-person mediation at the Court of Appeals building

In-person mediation sessions may be conducted at the Court of Appeals building in Raleigh by a current Court of Appeals judge so long as they are done in accordance with any applicable State or local restrictions and orders and directives from the Chief Justice and the Supreme Court regarding COVID-19.

### In-person mediation at a location provided by the parties

A current Court of Appeals judge *may* be willing and available to conduct a mediation in person at a location other than the Court, but this will depend upon the circumstances of the particular case and the distance of travel involved. The Court cannot guarantee that a current Court of Appeals judge will be available to conduct an in-person mediation at a location other than the Court but will attempt to accommodate the parties' request if possible. Parties who prefer to have an in-person mediation session with a current Court of Appeals judge at a location other than the Court may do so under the following conditions:

- a. All parties to a mediation agree to an in-person mediation session at a location other than the Court of Appeals building;
- b. The parties agree to secure the location for the mediation and ensure that the mediation is held in accordance with all applicable federal, state, and local restrictions regarding social distancing, travel, or gatherings; and
- c. The assigned judge agrees to conduct the mediation in-person at the location selected by the parties.

### Mediation by remote conference

If all parties to a mediation agree for the mediation to be conducted by remote conference by one of the current judges, a current Court of Appeals judge will be assigned to conduct the mediation. If all parties agree to mediation by a current Court of Appeals judge but do not all agree to mediation by remote conference, the mediation shall be canceled unless all parties and the assigned judge agree to hold an in-person mediation either at a location selected by the parties or at the Court of Appeals building.

## 4. Private mediation by in-person session or remote conference permitted

If the parties select a private mediator to conduct the mediation, all parties and the mediator may agree to hold a mediation session in-person or

remotely. For the mediation to go forward all parties and the mediator must agree on the location and format of the mediation session. Private mediators may also hold mediations by remote conference with the consent of all parties and the private mediator.