



# MEDIATED SETTLEMENT CONFERENCES AMID COVID-19

April 14, 2020

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## MEMORANDUM

TO: Trial Court Administrators  
District and Superior Court Trial Court Coordinators  
District and Superior Court Judicial Assistants  
Family Court Administrators

FROM: Office of General Counsel  
Court Programs Division  
Dispute Resolution Commission

CC: Clerks of Superior Court

DATE: March 24, 2020 (UPDATED April 14, 2020)

SUBJECT: District and Superior Court Mediated Settlement Conferences amid COVID-19 concerns

The following guidance related to mediated settlement conferences in both superior and district courts is based on [orders](#) issued by Chief Justice Beasley on March 13<sup>th</sup>, March 19<sup>th</sup>, April 2<sup>nd</sup>, and April 13<sup>th</sup>, 2020.

1. Does the time period in which court proceedings have been suspended affect mediation deadlines?

**Chief Justice Beasley issued an Order on April 13, 2020, extending the deadline for filings or acts that otherwise would be due within the period covered by the order, such that those acts will be treated as timely if done by the end of business on June 1<sup>st</sup>. All mediation filings or actions, including filing the Report of Mediator form, that are due to be filed or to occur on or after**





March 16<sup>th</sup> and by June 1<sup>st</sup> will be deemed timely if done by June 1<sup>st</sup>. For example, if a deadline to mediate is July 1<sup>st</sup>, the deadline remains July 1<sup>st</sup>. If the deadline to mediate is March 31<sup>st</sup>, the completion of mediation by June 1<sup>st</sup> will be considered timely.

2. Can a mediator hold a mediation in his or her own office upon consent of the parties?

If the attorneys, parties, and mediator want to meet in person to hold a mediation, they may NOT do so until Chief Justice Beasley's Order of April 2, 2020 expires. If the order is extended, the in-person mediation may not take place until all subsequent orders expire.

A mediation may be held only if all parties agree to waive physical attendance and the mediation is held via remote technology. The location of the mediation does not matter, so long as the mediation is not held in person. On April 2<sup>nd</sup>, Chief Justice Beasley ordered that all superior and district court proceedings be rescheduled unless the proceeding fell into one of four specific exceptions, such as being conducted using remote technology. The court and the Dispute Resolution (DRC) do not have jurisdiction over pre-litigation mediation.

3. How should I handle a case that has a mediated settlement conference scheduled in the next few weeks?

Mediators, all parties, and any other persons required to attend may waive the requirement to be physically present and agree to attend the mediation using remote technology if all participants consent under Mediated Settlement Conference (MSC) and Family Financial Settlement (FFS) Rule 4. If the mediation is held using remote technology, the mediator will file the Report of Mediator for the case with the clerk of court or with the judge's office, as your local procedure dictates.

If all parties do not consent to hold the mediation using remote technology, the conference will need to be rescheduled in compliance with Chief Justice Beasley's order issued on April 2<sup>nd</sup>. If the mediation deadline will not expire before the time period set out in Chief Justice Beasley's April 13<sup>th</sup> order, the parties and the mediator may reschedule the mediation without filing a motion to extend the mediation deadline with the court.

If the mediation deadline will expire before the time period set out in Chief Justice Beasley's April 13<sup>th</sup> order, the parties or the mediator may need to request an extension of the mediation deadline from the court (AOC-DRC-19). The mediation deadline shall not delay other proceedings, such as the trial date, but may otherwise be granted freely at the court's discretion. The motion to extend the deadline for completion of the mediation may be made by the judge's own motion, stipulation of the parties, or upon suggestion of the mediator.





4. Should we still send an order to mediate to the parties?

**Yes. Filings are still being accepted by the clerk. If a case is filed in superior court and it is eligible for mediation, you should continue to send the parties an Order to Mediate (AOC-CV-811) for MSC matters. In Family Financial matters, if the local rules provide for the Order to Mediate to be sent prior to the scheduling and discovery conference, you should send the parties an Order to Mediate (AOC-CV-824) for FFS matters. However, if your district provides the Order to Mediate to the parties at the scheduling and discovery conference and the conference has been continued, then the Order to Mediate should be provided to the parties when the conference is rescheduled.**

5. Is there an NCAOC form to extend the mediated settlement conference deadline?

**Yes, form AOC-DRC-19 may be used to extend the deadline for both MSC and FFS matters. The motion to extend the deadline may be initiated by the court, with the consent of all parties, or by the mediator.**

6. If the court grants a motion for extension of time to complete mediation, may the new deadline be extended beyond what is in the rules or statute?

**MSC Rule 3(b) states the mediation deadline shall be between 120 and 180 days from the order to mediate. FFS Rule 3(b) states the mediation deadline shall not be more than 150 days from the date of the order to mediate. These are the original deadlines. Once the matter has a deadline, the parties, mediator, or the judge may continue the MSC and FFS matter so long as it does not interfere with other proceedings. Therefore, the MSC or FFS rules do not limit the extension deadline for a mediation. So long as the trial date has moved, the deadline to complete mediation can be moved out as well.**

7. Can a case that has been filed but has not yet been ordered to mediation be mediated in person?

**NCAOC strongly urges those involved to follow any guidance from state and local health officials for limiting in-person interactions to preserve the health and safety of all involved.**

8. Should I assign a court-appointed mediator to the case if the designation of a mediator has not been filed within the allotted time (21 days for MSC or at the scheduling and discovery conference, or local rule, for FFS matters)?

**Under Chief Justice Beasley's order issued April 13, 2020, all filings due on or after March 16<sup>th</sup> and by June 1<sup>st</sup> are deemed timely if filed by June 1, 2020. Therefore, mediator designations due during this window of time will not require a mediator to be court-appointed unless a designation is not filed with the clerk by the close of business on June 1<sup>st</sup>. Please do not assign**





**a court-appointed mediator to a matter until after Chief Justice Beasley's order of April 13, 2020, and any subsequent orders, expire.**

9. Can the court order the mediation to be held remotely?

**No, the court may not order the mediation to be held remotely by its own motion. Pursuant to Chief Justice Beasley's April 2<sup>nd</sup> order, all parties must consent for the mediation to be held remotely.**

**Under Rule 4 of the MSC and FFS Rules, the requirement for physical attendance may be waived by the consent of all parties OR by order of the court, upon motion of a party and notice to the mediator and to all parties and persons required to attend. The Rules do not provide for the court to make its own motion to waive physical attendance.**

\*\* Senior Resident Superior Court Judges and Chief District Court Judges, or their designees, have the discretion to extend the time to complete mediation under the MSC and FFS Rules.

