

# DISPUTE RESOLUTION COMMISSION



NEWS AND UPDATES

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**SPECIAL EDITION**

## **DRC NEWS and UPDATES !**

### **Supreme Court Approves New Amendments to Rules Affecting Mediation**

In conference on June 3, 2020, the Supreme Court of North Carolina issued five orders that contain amendments to Mediation rule sets. These Rules went into effect on Wednesday, June 10, 2020. For a summary of the June 10, 2020 rule changes for the MSC, FFS, DCC, Clerk Program Rules, and Standards of Professional Conduct, please scroll to pages 4-5 of this Newsletter. Please take note of the change(s) that will affect your mediation practice.

#### **Q & A Regarding Remote Mediations:**

**Q. Can the parties sit with their attorneys during a remote mediation?**

**A.** Yes, the mediation rules are not intended to interfere with the attorney client relationship. The parties may be in the same room with their attorney during a remote mediation.

**Q. The parties are insisting that the mediation be held face-to-face, but I am uncomfortable and want to hold it remotely, what are my options?**

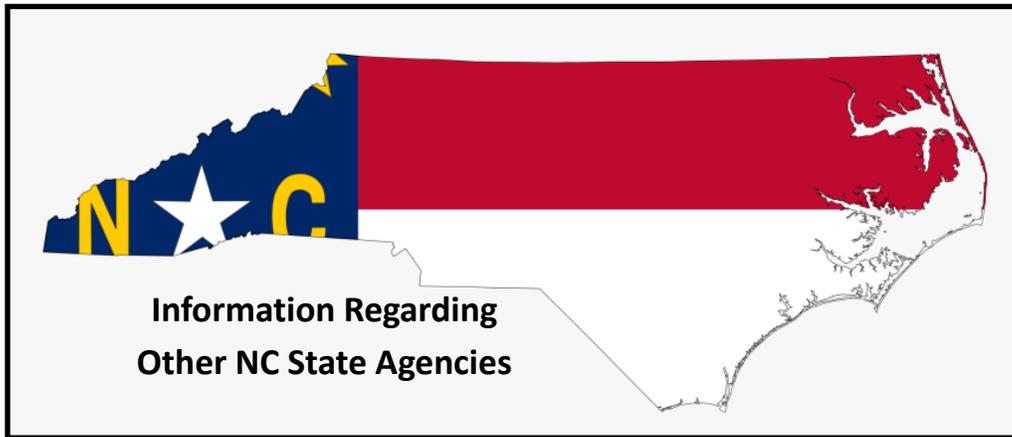
**A.** To hold the mediation in person, all parties including the mediator must agree to do so. Without an agreement, the mediation shall be held remotely. Should the parties or attorneys continue to insist on holding the mediation live, the parties may file a Consent Order for Substitution of Mediator.

**Q. I have been asked to conduct the mediation in-person, however one party will not meet in-person and requests that the mediation be held remotely, can I have one party be in person, and the other party be remote?**

**A.** Rule 4 calls for the conference to be held remotely, unless all parties agree and can maintain safe social distancing and comply with all safety guidelines. So long as the parties agree to the formation of the mediation, the mediation may move forward with one party appearing in person and one party appearing remotely. If all parties to the mediation do not consent, the conference shall be held remotely.

#### **MEDIATOR RENEWAL FY 2020-21**

Mediator renewal will begin on July 1, 2020 and run until September 30, 2020. Mediators may now self-report their CME at any time by logging into their Mediator Profile and enter their course(s). To find more information on CME, please visit the [Continuing Mediator Education page](#).



### **IMPORTANT NOTICE**

#### **FROM THE INDUSTRIAL COMMISSION**

The North Carolina Industrial Commission will hold a public Hearing on proposed temporary rulemaking (a proposed temporary amendment to Rule 11 NCAC 23G .0104) at 2:00 pm on Thursday, June 25, 2020. Out of abundance of caution and to address protective measures to help prevent the spread of COVID-19, the Public Hearing will be held via teleconference only instead of being held in person. The teleconference phone number is 1-888-363-4735 and the access code is 4465746. For more information, please visit the [NCIC website](#) for the Public Hearing Notice and Agenda.

### **IMPORTANT NOTICE FROM THE DEPARTMENT OF LABOR**

#### **New Mediation Program Needs Volunteers**

The Retaliatory Employment Discrimination Bureau of the NC Department of Labor will soon launch a voluntary mediated settlement conference program. The Bureau investigates complaints filed with by employees against their employers for retaliation under the Retaliatory Employment Discrimination Act. (REDA); N.C. Gen. Stat. 95-241 et. seq. REDA protects employees from retaliation for engaging in activities protected by REDA, such as filing or threatening to file a worker's compensation claim or a complaint with the NC Occupational Safety and Health Bureau. We need qualified mediators who are willing to work on a pro bono basis. These employment cases are very interesting and would offer opportunities to hone your mediation skills.

If you are interested in this program and REDA, please forward an email to DRC Staff at [DRCMediators@nccourts.org](mailto:DRCMediators@nccourts.org) to request additional information.

**Congratulations to the 40 Certified Mediator who were acknowledged as the  
2019 Pro Bono Society Inductees!**

*All inductees donated 50+ hours of free legal services to those that could not afford representation.*

Brian O. Beverly	Theodore C. Edwards, II	Douglas Edgar Koenig	Robin Milo Perrigo
William A. Blancato	Elliot A. Fus	Constantine H. Kutteh, II	Matthew T. Phillips
Susan H. Boyles	Richard W. Gabriel	Mark A. La Mantia	Barbara Phillips-Bute
James Michael Burton	Stephanie Jane Gibbs	Dena Beth Langely	Alice Carmichael Richey
William P. Cary	Lisa Robin Gordon Stella	William Anderson Long, Jr.	Kristin Holmquist Ruth
Jim D. Cooley	Christopher T. Graebe	Lynna Palmer Moen	James H. Slaughter
Jamie Humphries Davis	Charles Mark Holt	Emily A. Moseley	Timothy M. Smith
Kathryn Anne Deiter-Maradei	Amy R. Howard	J. Jefferson Newton	Richard Allan Waugaman, III
Anthony S. di Santi	Rosemary G. Kenyon	Nancy Black Norelli	R. Michael Wells, Sr.
Deborah Lynn Dilman	Richard J. Keshian	Sharon L. Parker	Julian H. Wright, Jr.

Commission staff is working to keep all certified mediators up-to-date on newly signed orders, filing deadlines, and helpful hints on how to conduct distant mediations during this difficult time. Please see the [DRC website](#), for “Important Information for Mediators to Know” containing information about state, federal, N.C. Business Court, and N.C. Industrial Commission mediations. It is recommended that mediators check the page frequently for newly posted information. Additionally, staff has posted a number of articles, provided by mediators, on how to conduct mediations through remote technology and Guidelines for Notaries.

The DRC office is closed during this time however staff is working remotely. The phones are checked daily for any messages, or you may email staff at [DRCMediators@nccourts.org](mailto:DRCMediators@nccourts.org), we will do our best to respond as quickly as possible.

**SAVE THE DATE**  
**CONFLICT RESOLUTION DAY 2020!**  
The Dispute Resolution Commission is planning it's annual  
reception for Conflict Resolution Day on  
Thursday, October 15, 2020. More information to follow!

**Commission Staff:**

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To: All Certified Mediators  
From: The Dispute Resolution Commission  
Date: June 5, 2020  
Regarding: Newly Adopted Rules (June 3, 2020)

In conference on June 3, 2020, the Supreme Court of North Carolina adopted orders amending seven rule sets that affect mediation in North Carolina. These Rules/Standards will become **effective on June 10, 2020**.

To view the newly adopted Rules/Standards, please visit the [Supreme Court's](#) webpage.

Below is a brief explanation about the changes.

### **MSC Rules:**

Rule 1(c)(2) substitutes the correct form within the rule.

**Rule 4(a)(2)\*** changes the physical attendance requirement to a presumption of attending by remote technology, such as telephone, videoconference, or other electronic means. The mediator and parties may mediate in person if all parties and persons required to attend the conference agree, and are able to comply with all federal, state, and local safety guidelines issued or by court order.

**Rule 7(b)** increases the court appointment one-time administrative fee to \$175 for all matters appointing a mediator as of June 10, 2020.

Any appointments made prior to June 10, 2020 shall remain at a \$150 administrative fee under the prior set of MSC Rules.

Please note, the hourly mediation fee remains \$150 per hour under the amended rules.

- Rule 8(a)(1) corrects a typographical error.
- Rule 8(a)(2)(b)(3) removes dated language.
- Rule 8 corrects leveling beginning with subsection (a)(3) through subsection (a)(10).

### **FFS Rules:**

Rule 2(a) removes the parties ability to designate a mediator who is not certified under these rules. All mediators, designated or court appointed to a family financial mediation case after June 10, 2020, shall be certified by the Commission.

- All designations of a non-certified mediator, made prior to June 10, 2020, may continue to mediate the family financial matter under the prior set of FFS Rules.

**Rule 4(a)(2)\*** changes the physical attendance requirement to a presumption of attending by remote technology, such as telephone, videoconference, or other electronic means. The mediator and parties may mediate in person if all parties and persons required to attend the conference agree, and are able to comply with all federal, state, and local safety guidelines issued or by court order.

**Rule 7(b)** increases the court appointment one-time administrative fee to \$175 for all matters appointing a mediator as of June 10, 2020.

- Any appointments made prior to June 10, 2020 shall remain at a \$150 administrative fee under the prior set of FFS Rules.
- Please note, the hourly mediation fee remains \$150 per hour under the amended rules.

**Rule 8(a)(2)(c)** provides a grandfather provision for experienced mediators who may waive certain application requirements, if they apply for certification on, or before, June 10, 2021.

- Attorney applicants may waive the 40-hour training and observation requirement if they have five years of experience, have mediated at least ten family financial matters within the last five years, and complete a 16-hour supplemental family mediation training course.
- Nonattorney applicants may waive the observation requirement if they meet one of the required licensures set forth in this rule and have mediated at least fifteen family financial matters within the last five years and complete a 40-hour family mediation training course and a six-hour legal terminology course.

All applicants shall also comply with the remaining application requirements under this rule. For example, the applicant shall be of good moral character, complete and submit an application for certification, and provide payment for the application fee and annual dues. Please review Rule 8 carefully for a list of all application requirements.

#### **DCC Rules:**

**Rule 5(a)\*** changes the physical attendance requirement to a presumption of attending by remote technology, such as telephone, videoconference, or other electronic means. The mediator and parties may mediate in person if all parties and persons required to attend the conference agree, and are able to comply with all federal, state, and local safety guidelines issued or by court order.

#### **Clerk Program:**

**Rule 4(a)(1)\*** changes the physical attendance requirement to a presumption of attending by remote technology, such as telephone, videoconference, or other electronic means. The mediator and parties may mediate in person if all parties and persons required to attend the conference agree, and are able to comply with all federal, state, and local safety guidelines issued or by court order.

#### **Standards of Conduct:**

**Standard 3(f) Confidentiality.** This new standard provides language that allows the duty of confidentiality to encompass a nonmediator employee or nonmediator associate who is acting as an agent of the mediator. This standard brings staff into the cone of confidentiality.

Please review carefully and discuss with your nonmediator employee(s) or associate(s).

Language was updated throughout the Standards substituting the word 'lawyer' for 'attorney' when dealing with matters concerning the State Bar of North Carolina.

\*The attendance presumption changing from physical attendance to in person attendance will last for the duration of the COVID-19 pandemic only. Based on the uncertainty surrounding COVID-19, and concerns the virus may last into the fall of 2020, the rules were amended permanently to help ease the administrative process of implementing the rules. These rules will revert to physical attendance at such time the Commission deems the pandemic no longer creates a safety issue for mediators, attorneys and litigants.