

IN THE SUPREME COURT OF NORTH CAROLINA

ORDER AMENDING THE
RULES OF MEDIATION FOR FARM NUISANCE DISPUTES

Pursuant to subsection 7A-38.3(e) of the General Statutes of North Carolina, the Court hereby amends Rule 3 and Rule 5 of the Rules of Mediation for Farm Nuisance Disputes.

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Rule 3. Selection of the Mediator

(a) **Time Period for Selection.** The parties to the dispute shall have twenty-one days from the date of the filing of the Request Form to select a mediator to conduct their mediation and to file an Appointment of Mediator in Prelitigation Farm Nuisance Dispute, Form AOC-CV-821 (Appointment Form).

(b) **Selection of the Certified Mediator by Agreement.** The clerk of superior court shall provide each party to the dispute with a list of certified superior court mediators serving the judicial district encompassing the county in which the Request Form was filed. If the parties are able to agree on a mediator from that list to conduct their mediation, then the party who filed the Request Form shall notify the clerk of superior court by filing an Appointment Form. The Appointment Form shall state: (i) the name, address, and telephone number of the certified mediator selected; (ii) the rate of compensation to be paid to the mediator; and (iii) that the mediator and the parties to the dispute have agreed on the selection and the rate of compensation.

(c) **Court Appointment of the Mediator.** If the parties to the dispute cannot agree on the selection of a certified superior court mediator, then the party who filed the Request Form shall file an Appointment Form with the clerk of superior court, moving the senior resident superior court judge to appoint a certified superior court mediator. The Appointment Form shall be filed with the clerk of superior court within twenty-one days of the date of the filing of the Request Form. The Appointment Form shall state whether any party prefers the mediator to be a certified attorney mediator or a certified nonattorney mediator. If the parties state a preference, then the senior resident superior court judge shall appoint a mediator in accordance with that preference. If no preference is expressed, then the senior resident superior court judge may appoint any certified superior court mediator.

As part of the application or annual certification renewal process, all mediators shall designate those judicial districts for which they are willing to accept court

appointments. Each designation shall be deemed to be a representation that the designating mediator has read and will abide by the local rules for, and will accept appointments from, the designated district, and will not charge for travel time and expenses incurred in carrying out his or her duties associated with those appointments. A mediator's refusal to accept an appointment in a judicial district designated by the mediator may be grounds for removal from that district's court appointment list by the Dispute Resolution Commission (Commission), or by the senior resident superior court judge.

The Commission shall provide the senior resident superior court judge of each judicial district a list of those certified superior court mediators requesting appointments in that district. The list shall contain each mediator's name, address, and telephone number. The list shall be provided to the senior resident superior court judge electronically through the Commission's website at <https://www.ncdrc.gov>.

The Commission shall promptly notify the senior resident superior court judge of any disciplinary action taken with respect to a mediator on the list of certified mediators for the judicial district.

(d) **Mediator Information Directory.** To assist parties in learning more about the qualifications and experience of certified mediators, the Commission shall post a list of certified superior court mediators on its website at <https://www.ncdrc.gov>, accompanied by each mediator's contact ~~and~~ biographical information, availability the judicial districts in which each mediator is available to serve, and whether ~~the~~ each mediator is willing to mediate farm nuisance disputes. If a mediator has supplied it to the Commission, the list shall also provide the mediator's designated attendance method and the mediator's biographical information, including information about the mediator's education, professional experience, and mediation training and experience.

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Rule 5. Authority and Duties of the Mediator

(a) Authority of the Mediator.

- (1) **Control of the Mediation.** The mediator shall at all times be in control of the mediation and the procedures to be followed. The mediator's conduct shall be governed by the Standards of Professional Conduct for Mediators.
- (2) **Private Consultation.** The mediator may communicate privately with any participant prior to, and during, the mediation. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the mediation.

- (3) **Scheduling the Mediation.** The mediator shall make a good faith effort to schedule the mediation at a time that is convenient to the participants, attorneys, and mediator. In the absence of agreement, the mediator shall select the date for the mediation.

(b) **Duties of the Mediator.**

- (1) **Informing the Parties.** At the beginning of the mediation, the mediator shall define and describe for the parties:
- a. the process of mediation;
 - b. the differences between mediation and other forms of conflict resolution;
 - c. the costs of mediation;
 - d. the fact that mediation is not a trial, that the mediator is not a judge, and that the parties may pursue their dispute in court if mediation is not successful;
 - e. the circumstances under which the mediator may meet and communicate privately with any of the parties, or with any other person;
 - f. whether, and under what conditions, communications with the mediator will be held in confidence during the mediation;
 - g. the inadmissibility of conduct and statements as provided by N.C.G.S. § 7A-38.1(l);
 - h. the duties and responsibilities of the mediator and the participants;~~and~~
 - i. the fact that any agreement reached will be reached by mutual consent~~;~~;
 - j. the fact that subsection (b)(5) of this rule prohibits any recording of the mediation; and
 - k. the fact that the parties may be subject to sanctions for violating these rules.
- (2) **Disclosure.** The mediator has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice, or partiality.
- (3) **Declaring Impasse.** It is the duty of the mediator to determine timely when an impasse exists and when the mediation should end.
- (4) **Scheduling and Holding the Mediation.** It is the duty of the mediator to schedule and conduct the mediation within the time

frame established by Rule 4. The mediator shall strictly observe Rule 4 unless an extension has been granted in writing by the senior resident superior court judge.

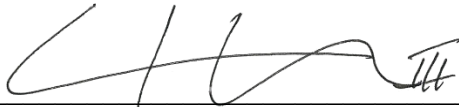
- (5) **No Recording.** There shall be no stenographic, audio, or video recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.

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These amendments to the Rules of Mediation for Farm Nuisance Disputes become effective on 1 May 2023.


This order shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 4th day of April 2023.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 4th day of April 2023.



GRANT E. BUCKNER
Clerk of the Supreme Court