

IN THE SUPREME COURT OF NORTH CAROLINA

ORDER AMENDING THE RULES OF
MEDIATION FOR MATTERS IN DISTRICT CRIMINAL COURT

Pursuant to subsection 7A-38.3D(d) of the General Statutes of North Carolina, the Court hereby amends Rule 6 of the Rules of Mediation for Matters in District Criminal Court.

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Rule 6. 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 process 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 or counsel prior to, and during, the mediation. The fact that a private communication has occurred with a participant shall be disclosed to all other participants at the beginning of the mediation.
- (3) **Inclusion and Exclusion of Participants at the Mediation.** In the mediator's discretion, the mediator may encourage or allow persons other than the parties or their attorneys to attend and participate in the mediation, provided that the mediator has determined the presence of such persons to be helpful in resolving the dispute or addressing an issue underlying it. Mediators may also exclude persons other than the parties and their attorneys whose presence the mediator deems would likely be, or which has been, counterproductive.
- (4) **Scheduling the Mediation.** The mediator or community mediation center staff involved in scheduling, shall make a good faith effort to schedule the mediation at a time that is convenient to the parties and any parent, guardian, or attorney who will be attending. In the absence of agreement, the mediator or staff member shall select the date for the mediation and notify those who will be participating. Parties are to cooperate with the

mediator in scheduling the mediation, including providing information as required by Rule 5(a)(4).

(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 fact that mediation is not a trial and that the mediator is not a judge, attorney, or therapist;
- c. the fact that the mediator is present only to assist the parties in reaching their own agreement;
- d. the circumstances under which the mediator may meet and communicate privately with the parties or with any other person;
- e. whether, and under what conditions, communications with the mediator will be held in confidence during the mediation;
- f. the inadmissibility of conduct and statements as provided in N.C.G.S. § 7A-38.3D(i);
- g. the duties and responsibilities of the mediator and the participants;
- h. the fact that any agreement reached will be by mutual consent;
- i. the fact that, if the parties are unable to agree and the mediator declares an impasse, the parties and the case will return to court;~~and~~
- j. the fact that, if an agreement is reached in mediation and the parties agree to request a dismissal of the charges pending in the case, the defendant shall pay a dismissal fee in accordance with N.C.G.S. § 7A-38.7 and N.C.G.S. § 7A-38.3D(m), unless: (i) the court, in its discretion, has waived the fee for good cause; or (ii) the parties agree to some other apportionment. Payment of the dismissal fee shall be made to the clerk of superior court in the county where the case was filed, and the community mediation center must provide the district attorney with a dismissal form and proof that the defendant has paid the dispute resolution fee before the charges can be dismissed~~;~~;
- k. the fact that Rule 4(e) prohibits any recording of the mediation; and


1. the fact that the parties may be subject to sanctions for violating these rules.
- (2) **Disclosure.** Consistent with the Standards of Professional Conduct for Mediators, 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.** Consistent with the Standards of Professional Conduct for Mediators, it is the duty of the mediator to determine timely when an impasse exists and when the mediation should end. The mediator shall inquire of and consider the desires of the parties to cease or continue the mediation.
- (4) **Reporting Results of the Mediation.** The mediator or community mediation center shall report the outcome of mediation to the court in writing on a NCAOC form by the date the case is next calendared. If the criminal case is scheduled for court on the same day as the mediation, then the mediator shall inform the attending district attorney of the outcome of the mediation before the close of court on that date, unless alternative arrangements are approved by the district attorney.
- (5) **Scheduling and Holding the Mediation.** It is the duty of the mediator and the community mediation center to schedule and conduct the mediation prior to any deadline set by the court. Deadlines shall be strictly observed by the mediator and the community mediation center, unless the deadline is extended by the court.

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These amendments to the Rules of Mediation for Matters in District Criminal Court 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.

A handwritten signature in blue ink, appearing to read "Grant E. Buckner", written over a horizontal line.

GRANT E. BUCKNER
Clerk of the Supreme Court