

IN THE SUPREME COURT OF NORTH CAROLINA

ORDER AMENDING THE RULES FOR MEDIATED
SETTLEMENT CONFERENCES AND OTHER SETTLEMENT
PROCEDURES IN SUPERIOR COURT CIVIL ACTIONS

Pursuant to subsection 7A-38.1(c) of the General Statutes of North Carolina, the Court hereby amends the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions. This order affects Rules 2, 4, 6, 8, and 11.

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Rule 2. Designation of the Mediator

(a) **Designation of a Mediator by Agreement of Parties.** Within twenty-one days of the court's order, the parties may, by agreement, designate a mediator who is certified under these rules. A Designation of Mediator in Superior Court Civil Action, Form AOC-CV-812 (Designation Form), must be filed with the court within twenty-one days of the court's order. The plaintiff's attorney should file the Designation Form; however, any party may file the Designation Form. The party filing the Designation Form shall serve a copy on all parties and the mediator designated to conduct the mediated settlement conference. The Designation Form shall state: (i) the name, address, and telephone number of the mediator; (ii) the rate of compensation of the mediator; (iii) that the mediator and opposing counsel have agreed upon the designation and rate of compensation; and (iv) that the mediator is certified under these rules.

(b) **Appointment of a Mediator by the Court.** If the parties cannot agree on the designation of a mediator, then the plaintiff or the plaintiff's attorney shall notify the court by filing a Designation Form, requesting, on behalf of the parties, that the senior resident superior court judge appoint a mediator. The Designation Form must be filed within twenty-one days of the court's order and shall state that the attorneys for the parties have discussed the designation of a mediator and have been unable to agree.

Upon receipt of a Designation Form requesting the appointment of a mediator, or in the event that the parties fail to file a Designation Form with the court within twenty-one days of the court's order, the senior resident superior court judge shall appoint a mediator certified under these rules who has expressed a willingness to mediate actions within the senior resident superior court judge's district.

In appointing a mediator, the senior resident superior court judge shall rotate through a list of available certified mediators. Appointments shall be made without regard to race, gender, religious affiliation, or whether the mediator is a licensed attorney. The senior resident superior court judge shall retain discretion to depart from a strict rotation of mediators when, in the judge's discretion, there is good cause in a case to do so.

As part of the application or annual certification renewal process, all mediators shall designate the judicial districts in which they are willing to accept court appointments. Each designation is 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 the district's appointment list by the Dispute Resolution Commission (Commission) or the senior resident superior court judge.

The Commission shall provide the senior resident superior court judge of each judicial district a list of 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 available on 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.

(c) **Mediator Information Directory.** To assist the parties in designating a mediator, 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 information and the judicial districts in which each mediator is available to serve. 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.

(d) **Withdrawal or Disqualification of the Mediator.**

- (1) Any party may move the senior resident superior court judge of the judicial district where the action is pending for an order disqualifying the mediator using a Notice of Withdrawal/Disqualification of Mediator and Order for Substitution of Mediator, Form AOC-DRC-20. For good cause, an order disqualifying the mediator shall be entered.
- (2) A mediator who wishes to withdraw from a case may file a Notice of Withdrawal/Disqualification of Mediator and Order for Substitution of Mediator, Form AOC-DRC-20, with the senior

resident superior court judge of the judicial district where the action is pending.

- (3) If a mediator withdraws or is disqualified, then a substitute mediator shall be designated or appointed under this rule. A mediator who has withdrawn or been disqualified shall not be entitled to receive an administrative fee, unless the mediation has been commenced.

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Rule 4. Duties of Parties, Attorneys, and Other Participants in Mediated Settlement Conferences

(a) **Attendance.**

- (1) **Persons Required to Attend.** The following persons shall attend a mediated settlement conference:

a. Parties to the action, to include the following:

1. All individual parties.
2. Any party that is a nongovernmental entity shall be represented at the mediated settlement conference by an officer, employee, or agent who is not the entity's outside counsel and who has been authorized to decide whether, and on what terms, to settle the action on behalf of the entity, or who has been authorized to negotiate on behalf of the entity and can promptly communicate during the conference with persons who have decision-making authority to settle the action; provided, however, that if a specific procedure is required by law (e.g., a statutory pre-audit certificate) or the entity's governing documents (e.g., articles of incorporation, bylaws, partnership agreement, articles of organization, or operating agreement) to approve the terms of the settlement, then the representative shall have the authority to negotiate and make recommendations to the applicable approval authority in accordance with that procedure.
3. Any party that is a governmental entity shall be represented at the mediated settlement conference by an employee or agent who is not the entity's outside counsel and who: (i) has authority to decide on behalf of the entity whether and on what terms

to settle the action; (ii) has been authorized to negotiate on behalf of the entity and can promptly communicate during the conference with persons who have decision-making authority to settle the action; or (iii) has authority to negotiate on behalf of the entity and to make a recommendation to the entity's governing board, if under applicable law the proposed settlement terms can be approved only by the entity's governing board.

Notwithstanding anything in these rules to the contrary, any agreement reached which involves a governmental entity may be subject to the provisions of N.C.G.S. § 159-28(a).

- b. A representative of each liability insurance carrier, uninsured motorist insurance carrier, and underinsured motorist insurance carrier, which may be obligated to pay all or part of any claim presented in the action. Each carrier shall be represented at the mediated settlement conference by an officer, employee, or agent, other than the carrier's outside counsel, who has the authority to make a decision on behalf of the carrier, or who has been authorized to negotiate on behalf of the carrier, and can promptly communicate during the conference with persons who have decision-making authority.
- c. At least one counsel of record for each party or other participant whose counsel has appeared in the action.

~~(2) **Attendance Required Through the Use of Remote Technology.** Any party or person required to attend a mediated settlement conference shall attend the conference using remote technology; for example, by telephone, videoconference, or other electronic means. The conference shall conclude when an agreement is reduced to writing and signed, as provided in subsection (c) of this rule, or when an impasse is declared. Notwithstanding this remote attendance requirement, the conference may be conducted in person if:~~

- ~~a. the mediator and all parties and persons required to attend the conference agree to conduct the conference in person and to comply with all federal, state, and local safety guidelines that have been issued; or~~
- ~~b. the senior resident superior court judge, upon motion of a party and notice to the mediator and to all parties and persons required to attend the conference, so orders.~~

(2) **Attendance Method.**

a. **Determination.**

1. All parties and persons required to attend a mediated settlement conference may agree to conduct the conference in person, using remote technology, or using a hybrid of in-person attendance and remote technology.
2. If all parties and persons required to attend the conference do not agree on an attendance method and the mediator has designated in the Mediator Information Directory that he or she will conduct conferences only using remote technology, then the conference shall be conducted using remote technology.
3. If all parties and persons required to attend the conference do not agree on an attendance method and the mediator has not selected remote technology as his or her designated attendance method in the Mediator Information Directory, then the conference shall be conducted in person.

b. **Order by Court; Mediator Withdrawal.** The senior resident superior court judge, upon motion of a party and notice to the mediator and to all other parties and persons required to attend the mediated settlement conference, may order that the conference be conducted in person, using remote technology, or using a hybrid of in-person attendance and remote technology.

If the method of attendance ordered by the judge is contrary to the attendance method the mediator has designated in the Mediator Information Directory, then the mediator may withdraw from the case under Rule 2(d).

(3) **Scheduling.** Participants required to attend the mediated settlement conference shall promptly notify the mediator after designation or appointment of any significant problems that they may have with the dates for conference sessions before the completion deadline, and shall inform the mediator of any problems that arise before an anticipated mediated settlement conference session is scheduled by the mediator. If a scheduling conflict in another court proceeding arises after a conference session has been scheduled by the mediator, then the participants shall promptly attempt to resolve the conflict under Rule 3.1 of the General Rules of Practice for the Superior and District Courts,

or, if applicable, the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina on 20 June 1985.

- (4) **Excusing the Attendance Requirement.** Any party or person may be excused from the requirement to attend a mediated settlement conference with the consent of all parties and persons required to attend the conference and the mediator.
- (5) **Safety Compliance.** The mediator and all parties and persons required to attend a mediated settlement conference shall comply with all federal, state, and local safety guidelines that are in place for trial court proceedings at the time of the conference.

(b) **Notifying Lienholders.** Any party or attorney who has received notice of a lien, or other claim upon proceeds recovered in the action, shall notify the lienholder or claimant of the date, time, and location of the mediated settlement conference, and shall request that the lienholder or claimant attend the conference or make a representative available with whom to communicate during the conference.

(c) **Finalizing Agreement.**

- (1) If an agreement is reached at the mediated settlement conference, then the parties shall reduce the terms of the agreement to writing and sign the writing, along with their counsel. By stipulation of the parties and at the parties' expense, the agreement may be electronically recorded. If the agreement resolves all issues in the dispute, then a consent judgment or one or more voluntary dismissals shall be filed with the court by such persons as the parties shall designate.
- (2) If the agreement resolves all issues at the mediated settlement conference, then the parties shall give a copy of the signed agreement, consent judgment, or voluntary dismissal to the mediator and to all parties at the conference, and shall file the consent judgment or voluntary dismissal with the court within thirty days of the conference, or within ninety days if the State or a political subdivision of the State is a party to the action, or before expiration of the mediation deadline, whichever is later. In all cases, a consent judgment or voluntary dismissal shall be filed prior to the scheduled trial.
- (3) If an agreement that resolves all issues in the dispute is reached prior to the mediated settlement conference, or is finalized while the conference is in recess, then the parties shall reduce the terms of the agreement to writing and sign the writing, along with their counsel, and shall file a consent judgment or voluntary dismissal disposing of all issues with the court within thirty days of the conference, or within ninety days if the State or a political

subdivision of the State is a party to the action, or before expiration of the mediation deadline, whichever is later.

- (4) A designee may sign the agreement on behalf of a party only if the party does not attend the mediated settlement conference and the party provides the mediator with a written verification that the designee is authorized to sign the agreement on the party's behalf.
- (5) When an agreement is reached upon all issues, all attorneys of record must notify the senior resident superior court judge within four business days of the settlement and advise who will file the consent judgment or voluntary dismissal.

(d) **Payment of the Mediator's Fee.** The parties shall pay the mediator's fee as provided by Rule 7.

(e) **Related Cases.** Upon application of any party or person, the senior resident superior court judge may order that an attorney of record or a party in a pending superior court civil action, or a representative of an insurance carrier that may be liable for all or any part of a claim pending in superior court, shall, upon reasonable notice, attend a mediation conference that may be convened in another pending case, regardless of the forum in which the other case may be pending, provided that all parties in the other pending case consent to the attendance ordered under this rule. Any attorney, party, or representative of an insurance carrier that properly attends a mediation conference under this rule shall not be required to pay any of the mediation fees or costs related to that mediation conference. Any disputed issue concerning an order entered under this rule shall be determined by the senior resident superior court judge who entered the order.

(f) **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.

Comment

Comment to Rule 4(a). Parties subject to Chapter 159 of the General Statutes of North Carolina—which provides, among other things, that if an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, then the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been pre-audited to assure compliance with N.C.G.S. § 159-28(a) and that an obligation incurred in violation of N.C.G.S. § 159-28(a) or (a1) is invalid and may not be enforced—should, as appropriate, inform all participants at the beginning of the mediation

of the preaudit requirement and the consequences for failing to preaudit under N.C.G.S. § 159-28.

Rule 4(a)(2)(a) describes the attendance methods used for mediated settlement conferences. If a conference is conducted using remote technology, then the mediator should ensure that the parties are able to fully communicate with all other participants and videoconferencing is encouraged.

Comment to Rule 4(c). Consistent with N.C.G.S. § 7A-38.1(l), if a settlement is reached during a mediated settlement conference, then

the mediator shall ensure that the terms of the settlement are reduced to writing and signed by the parties, or by the parties' designees, and by the parties' attorneys before ending the conference. No settlement shall be enforceable unless it has been reduced to writing and signed by the parties or by the parties' designees.

Cases in which an agreement upon all issues has been reached should be disposed of as expeditiously as possible. This assures that the mediator and the parties move the case toward disposition while honoring the private nature of the mediation process and the mediator's duty of confidentiality. If the parties wish to keep the terms of the settlement confidential, then they may timely file with the court closing documents that do not contain confidential terms (e.g., voluntary dismissal or a consent judgment resolving all claims). Mediators will not be required by local rules to submit agreements to the court.

Comment to Rule 4(e). Rule 4(e) clarifies a senior resident superior court judge's authority to order a party, attorney of record, or representative of an insurance carrier to attend proceedings in another forum that are related to

the superior court civil action. For example, when there are workers' compensation claims being asserted in a case before North Carolina Industrial Commission, there are typically additional claims asserted in superior court against a third-party tortfeasor. Because of the related nature of the claims, it may be beneficial for a party, attorney of record, or representative of an insurance carrier in the superior court civil action to attend the North Carolina Industrial Commission mediation conference in order to resolve the pending claims. Rule 4(e) specifically authorizes a senior resident superior court judge to order a party, attorney of record, or representative of an insurance carrier to attend a proceeding in another forum, provided that all parties in the related matter consent and the persons ordered to attend receive reasonable notice of the proceeding. The *North Carolina Industrial Commission Rules for Mediated Settlement and Neutral Evaluation Conferences* contain a similar provision, which provides that persons involved in a North Carolina Industrial Commission case may be ordered to attend a mediated settlement conference in a related matter.

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Rule 6. Authority and Duties of the Mediator

(a) Authority of the Mediator.

- (1) **Control of the Mediated Settlement Conference.** The mediator shall at all times be in control of the mediated settlement conference 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 mediated settlement conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.

(b) Duties of the Mediator.

- (1) **Informing the Parties.** At the beginning of the mediated settlement conference, 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 the mediated settlement conference;
 - d. the fact that the mediated settlement conference is not a trial, that the mediator is not a judge, and that the parties retain their right to a trial if they do not reach settlement;
 - 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 mediated settlement conference;
 - g. the inadmissibility of conduct and statements as provided by N.C.G.S. § 7A-38.1;
 - 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 Rule 4(f) prohibits any recording of the mediated settlement conference; 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 in a timely manner that an impasse exists and that the mediated settlement conference should end. The mediator shall inquire of and consider the desires of the parties to cease or continue the conference.
- (4) **Reporting Results of the Mediated Settlement Conference.**
- a. The mediator shall report to the court the results of the mediated settlement conference and any settlement reached by the parties prior to, or during, a recess of the conference. Mediators shall also report the results of mediations held in other superior court civil cases in which a conference was not ordered by the court. The report shall be filed on a Report of Mediator in Superior Court Civil

Action, Form AOC-CV-813, within ten days of the conclusion of the conference or within ten days of the mediator being notified of the settlement, and shall include the names of the persons who attended the conference, if a conference was held. If a partial agreement was reached at the conference, then the report shall state the claims for relief that were resolved and the names of any parties that have no claims remaining for trial. Local rules shall not require the mediator to send a copy of the parties' agreement to the court.

- b. If an agreement upon all issues is reached prior to or at the mediated settlement conference, or during a recess of the conference, then the mediator's report shall state whether the action will be concluded by consent judgment or voluntary dismissal and state the name, address, and telephone number of the person designated by the parties to file the consent judgment or dismissal with the court. The mediator shall advise the parties that Rule 4(c) requires them to file the consent judgment or voluntary dismissal with the court within thirty days of the conference, or within ninety days if the State or a political subdivision of the State is a party to the action, or before expiration of the mediation deadline, whichever is later. The mediator shall indicate on the report that the parties have been so advised.
- c. The Commission or the North Carolina Administrative Office of the Courts (NCAOC) may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
- d. A mediator who fails to report as required by this rule shall be subject to sanctions by the senior resident superior court judge. The sanctions shall include, but are not limited to, fines or other monetary penalties, decertification as a mediator, and any other sanction available through the court's contempt power. The senior resident superior court judge shall notify the Commission of any action taken against a mediator under this subsection.

- (5) **Scheduling and Holding the Mediated Settlement Conference.** It is the duty of the mediator to schedule and conduct the mediated settlement conference prior to the conference completion deadline set out in the court's order. The mediator shall make an effort to schedule the conference at a time that is convenient to all participants. In the absence of

agreement, the mediator shall select a date and time for the conference. The deadline for completion of the conference shall be strictly observed by the mediator, unless the deadline is changed by written order of the senior resident superior court judge.

A mediator selected by agreement of the parties shall not delay scheduling or holding a conference because one or more of the parties has not paid an advance fee deposit as required by the agreement.

Comment

Parties subject to Chapter 159 of the General Statutes of North Carolina—which provides, among other things, that if an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, then the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has

been pre-audited to assure compliance with N.C.G.S. § 159-28(a) and that an obligation incurred in violation of N.C.G.S. § 159-28(a) or (a1) is invalid and may not be enforced—should, as appropriate, inform all participants at the beginning of the mediation of the preaudit requirement and the consequences for failing to preaudit under N.C.G.S. § 159-28.

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Rule 8. Mediator Certification and Decertification

(a) The Commission may receive and approve applications for certification of persons to be appointed as superior court mediators. In order to be certified, an applicant must satisfy the requirements of this subsection.

- (1) The applicant must complete: (i) at least forty hours of Commission-certified trial court mediation training, or (ii) at least forty hours of Commission-certified family and divorce mediation training and a sixteen-hour Commission-certified supplemental trial court mediation training.
- (2) The applicant must have the following training, experience, and qualifications:
 - a. An attorney-applicant may be certified if he or she:
 1. is a member in good standing of the North Carolina State Bar; or
 2. is a member similarly in good standing of the bar of another state and eligible to apply for admission to the North Carolina State Bar under Chapter 1, Subchapter C, of the North Carolina State Bar Rules and the Rules Governing the Board of Law Examiners and the Training of Law Students,

27 N.C. Admin. Code 1C.0105; demonstrates familiarity with North Carolina court structure, legal terminology, and civil procedure; provides to the Commission three letters of reference about the applicant's good character, including at least one letter from a person with knowledge of the applicant's professional practice; and possesses the experience required by this subsection; and

3. has at least five years of experience after date of licensure as a judge, practicing attorney, law professor, or mediator, or has equivalent experience.

b. A nonattorney-applicant may be certified if he or she:

1. has, as a prerequisite for the forty hours of Commission-certified trial court mediation training, completed a six-hour training provided by a Commission-certified trainer on North Carolina court organization, legal terminology, civil court procedure, the attorney-client privilege, the unauthorized practice of law, and the common legal issues arising in superior court civil actions;

2. has provided to the Commission three letters of reference as to the applicant's good character, including at least one letter from a person with knowledge of the applicant's experience qualifying the applicant under subsection (a)(2)(b)(3) of this rule; and

3. has completed ~~either~~ one of the following:

- i. a minimum of twenty hours of basic mediation training provided by a trainer acceptable to the Commission and, after completing the twenty-hour training, has mediated at least thirty disputes over the course of at least three years, or has equivalent experience, and possesses a four-year college degree from an accredited institution, and has four years of a high or relatively high level of professional or management experience of an executive nature in a professional, business, or governmental entity; ~~or~~

- ii. ten years of a high or relatively high level of professional or management experience of an

executive nature in a professional, business, or governmental entity, and possesses a four-year college degree from an accredited institution-; or

- iii. a master's degree or doctoral degree in alternative dispute resolution studies from an accredited institution and possesses five years of a high or relatively high level of professional or management experience of an executive nature in a professional, business, or governmental entity.

Any current or former attorney who is disqualified by the attorney licensing authority of any state shall be ineligible for certification under subsections (a)(2)(a) and (a)(2)(b) of this rule.

- (3) The applicant must complete the following observations:
 - a. **All Applicants.** All applicants for certification shall observe two mediated settlement conferences, at least one of which shall be of a superior court civil action.
 - b. **Nonattorney-Applicants.** Nonattorney-applicants for certification shall observe three mediated settlement conferences, in addition to those required under subsection (a)(3)(a) of this rule, that are conducted by at least two different mediators. At least one of the additional observations shall be of a superior court civil action.
 - c. **Conferences Eligible for Observation.** Conferences eligible for observation under subsection (a)(3) of this rule shall be those in cases pending before the North Carolina superior courts, the North Carolina Court of Appeals, the North Carolina Industrial Commission, the North Carolina Office of Administrative Hearings, or the federal district courts in North Carolina that are ordered to mediation or conducted by an agreement of the parties which incorporates the rules of mediation of one of those entities.

Conferences eligible for observation shall also include those conducted in disputes prior to litigation that are mediated by an agreement of the parties and incorporate the rules for mediation of one of the entities named above.

All conferences shall be conducted by a certified superior court mediator under rules adopted by one of the above entities and shall be observed from their beginning

to settlement or when an impasse is declared. Observations shall be reported on a Certificate of Observation – Mediated Settlement Conference Program, Form AOC-DRC-07.

All observers shall conform their conduct to the Commission's policy on *Guidelines for Observer Conduct*.

- (4) The applicant must demonstrate familiarity with the statutes, rules, and practices governing mediated settlement conferences in North Carolina.
- (5) The applicant must be of good moral character and adhere to the Standards of Professional Conduct for Mediators when acting under these rules. On his or her application(s) for certification or application(s) for certification renewal, an applicant shall disclose any:
 - a. pending criminal charges;
 - b. criminal convictions;
 - c. restraining orders issued against him or her;
 - d. failures to appear;
 - e. closed grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country;
 - f. disciplinary action taken against him or her by a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country, including, but not limited to, disbarment, revocation, decertification, or suspension of any professional license or certification, including the suspension or revocation of any license, certification, registration, or qualification to serve as a mediator in another state or country, even if stayed;
 - g. judicial sanctions imposed against him or her in any jurisdiction;
 - h. civil judgments, tax liens, or bankruptcy filings that occurred within the ten years preceding the date that the initial or renewal application was filed with the Commission; or
 - i. pending grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country.

If a matter listed in subsections (a)(5)(a) through (a)(5)(h) of this rule arises after a mediator submits his or her initial or renewal application for certification, then the mediator shall report the matter to the Commission no later than thirty days after receiving notice of the matter.

If a pending grievance or complaint described in subsection (a)(5)(i) of this rule is filed after a mediator submits his or her initial or renewal application for certification, then the mediator shall report the matter to the Commission no later than thirty days after receiving notice of the matter or, if a response to the grievance or complaint is permitted by the professional licensing, certifying, or regulatory body, no later than thirty days after the due date for the response.

As referenced in this subsection, criminal charges or convictions (excluding infractions) shall include felonies, misdemeanors, or misdemeanor traffic violations (including driving while impaired) under the law of North Carolina or another state, or under the law of a federal, military, or foreign jurisdiction, regardless of whether the adjudication was withheld (prayer for judgment continued) or the imposition of a sentence was suspended.

- (6) The applicant must submit proof of qualifications set out in this rule on a form provided by the Commission.
- (7) The applicant must pay all administrative fees established by the NCAOC upon the recommendation of the Commission.
- (8) The applicant must agree to accept the fee ordered by the court under Rule 7 as payment in full of a party's share of the mediator's fee.
- (9) The applicant must comply with the requirements of the Commission for completing and reporting continuing mediator education or training.
- (10) The applicant must agree, once certified, to make reasonable efforts to assist applicants for mediator certification in completing their observation requirements.

(b) No mediator who held a professional license and relied upon that license to qualify for certification under subsections (a)(2)(a) or (a)(2)(b) of this rule shall be decertified or denied recertification because that mediator's license lapses, is relinquished, or becomes inactive; provided, however, that this subsection shall not apply to any mediator whose professional license is revoked, suspended, lapsed, relinquished, or whose professional license becomes inactive due to disciplinary action or the threat of disciplinary action from his or her licensing authority.

Any mediator whose professional license is revoked, suspended, lapsed, or relinquished, or whose professional license becomes inactive, shall report the matter to the Commission.

(c) A mediator's certification may be revoked or not renewed at any time it is shown to the satisfaction of the Commission that a mediator no longer meets the qualifications set out in this rule or has not faithfully observed these rules or those of any district in which he or she has served as a mediator. Any person who is or has been disqualified by a professional licensing authority of any state for misconduct shall be ineligible for certification under this rule. No application for certification renewal shall be denied on the grounds that the mediator's training and experience does not meet the training and experience required under rules which were promulgated after the date of the applicant's original certification.

Comment

Comment to Rule 8(a)(2). Commission staff has discretion to waive the requirements set out in Rule 8(a)(2)(a)(2) and Rule 8(a)(2)(b)(1), if the applicant can demonstrate sufficient familiarity with North Carolina legal terminology, court structure, and procedure.

Comment to Rule 8(a)(2)(b)(3). Administrative, secretarial, and paraprofessional experience will not generally qualify as "a high or relatively high level of professional or management experience of an executive nature."

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Rule 11. Rules for Neutral Evaluation

(a) **Nature of Neutral Evaluation.** Neutral evaluation is an informal, abbreviated presentation of the facts and issues by the parties to a neutral at an early stage of the case. The neutral is responsible for evaluating the strengths and weaknesses of the case, providing a candid assessment of liability, the settlement value, and a dollar value or range of potential awards if the case proceeds to trial. The neutral is also responsible for identifying areas of agreement and disagreement and suggesting necessary and appropriate discovery.

(b) **When the Neutral Evaluation Conference Is to Be Held.** As a guiding principle, the neutral evaluation conference should be held at an early stage of the case after the time for the filing of answers has expired, but in advance of the expiration of the discovery period.

(c) **Preconference Submissions.** No later than twenty days prior to the date established for the neutral evaluation conference to begin, each party shall provide the neutral with written information about the case and shall certify to the neutral that they provided a copy of such summary to all other parties in the case. The information provided to the neutral and the other parties shall be a summary of the significant facts and issues in the party's case, shall not be more than five pages in length, and shall have attached to it copies of any documents supporting the

parties' summary. Information provided to the neutral and to the other parties under this paragraph shall not be filed with the court.

(d) **Replies to Preconference Submissions.** No later than ten days prior to the date set for the neutral evaluation conference to begin, any party may, but is not required to, send additional information to the neutral in writing, not exceeding three pages in length, responding to a question from an opposing party. The response shall be served on all other parties, and the party sending the response shall certify such service to the neutral, but the response need not be filed with the court.

(e) **Neutral Evaluation Conference Procedure.** Prior to a neutral evaluation conference, the neutral may request additional information in writing from any party. At the conference, the neutral may address questions to the parties and give the parties an opportunity to complete their summaries with a brief oral statement.

(f) **Modification of Procedure.** Subject to the approval of the neutral, the parties may agree to modify the procedures required by these rules for neutral evaluation.

(g) **Neutral's Duties.**

- (1) **Neutral's Opening Statement.** At the beginning of the neutral evaluation conference, in addition to the matters set out in Rule 10(c)(2)(b), the neutral shall define and describe for the parties:
 - a. the fact that the neutral evaluation conference is not a trial, that the neutral is not a judge, that the neutral's opinions are not binding on any party, and that the parties retain the right to a trial if they do not reach a settlement; and
 - b. the fact that any settlement reached will be only by mutual consent of the parties.
- (2) **Oral Report to Parties by Neutral.** In addition to the written report to the court required under these rules, at the conclusion of the neutral evaluation conference, the neutral shall issue an oral report to the parties advising them of the neutral's opinion about the case. The opinion shall include a candid assessment of liability, an estimated settlement value, and the strengths and weaknesses of each party's claims in the event that the case proceeds to trial. The oral report shall also contain a suggested settlement or disposition of the case and the reason for the neutral's suggestion. The neutral shall neither reduce his or her oral report to writing nor inform the court of the oral report.
- (3) **Report of Neutral to Court.** Within ten days after the completion of the neutral evaluation conference, the neutral shall

file a written report with the court using a Report of Neutral Conducting Settlement Procedure Other Than Mediated Settlement Conference or Arbitration in Superior Court Civil Action, Form AOC-CV-817. The neutral's report shall inform the court when and where the conference was held, the names of those who attended, and the name of any party, attorney, or representative of an insurance carrier known to the neutral to have been absent from the conference without permission. The report shall also inform the court whether an agreement upon all issues was reached by the parties and, if so, state the name of the person designated to file the consent judgment or voluntary dismissal with the court. If a partial agreement was reached at the conference, then the report shall state the claims for relief that were resolved and the names of any parties that have no claims remaining for trial. Local rules shall not require the neutral to send a copy of any agreement reached by the parties to the court.

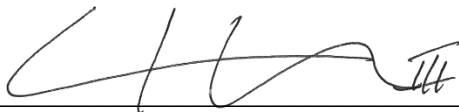
(h) **Neutral's Authority to Assist Negotiations.** If all parties to the neutral evaluation conference request and agree, then a neutral may assist the parties in settlement discussions.

* * *

These amendments to the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions 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