

IN THE SUPREME COURT OF NORTH CAROLINA


ORDER ADOPTING 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 adopts the Rules of Mediation for Matters in District Criminal Court, which appear on the following pages. These rules supersede the Rules Implementing Mediation in Matters Pending in District Criminal Court, published at [367 N.C. 1125–38](#).

The Rules of Mediation for Matters in District Criminal Court become effective on 1 March 2020.


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 23rd day of January, 2020.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of January, 2020.



AMY L. FUNDERBURK
Clerk of the Supreme Court

Rules of Mediation for Matters in District Criminal Court

Rule 1. Voluntary Mediation of Criminal Matters in District Court

(a) **Purposes of Mediation.** These rules are promulgated under N.C.G.S. § 7A-38.3D to implement programs for voluntary mediation of certain criminal cases within the jurisdiction of the district court. The procedures in these rules are intended to assist private parties, with the help of a neutral mediator, in discussing and resolving their disputes and in conserving judicial resources. The chief district court judge, the district attorney, and the community mediation center shall determine whether to establish a program in a district court judicial district. Because participation in this program and in the mediation process is voluntary, no defendant, complaining witness, or any other person who declines to participate in mediation, or whose case cannot be settled in mediation, shall face any adverse consequences as a result of his or her failure to participate or reach an agreement. Consistent with N.C.G.S. § 7A-38.3D(j), a party's participation or failure to participate in mediation must be held confidential and not revealed to the court or the district attorney.

(b) **Definitions.**

- (1) **Court.** "Court," as used throughout these rules, refers to a district court judge or, as appropriate, the judge's designee.
- (2) **Mediation Process.** "Mediation process," as used throughout these rules, encompasses intake, screening, and mediation until either an impasse is declared or the case is dismissed.
- (3) **District Attorney.** "District attorney," as used throughout these rules, refers to the district attorney, an assistant district attorney, or any staff member or designee of the district attorney.

(c) **Initiating the Mediation.**

- (1) **Suggestion by the Court.** In judicial districts that establish a voluntary mediation program, the court may encourage private parties to attend mediation. In determining whether to encourage mediation, the court should consider:
 - a. whether the parties are willing to participate;
 - b. whether continuing prosecution is in the best interests of the parties or any nonparties impacted by the dispute;
 - c. whether the parties involved in the dispute have an expectation of a continuing relationship and whether there is an issue underlying their dispute that has not been addressed and which may create later conflict or require court involvement;

- d. whether cross-warrants have been filed in the case; and
 - e. whether the case might otherwise be subject to voluntary dismissal.
- (2) **Multiple Charges.** Multiple charges pending in the same court against a single defendant, or pending against multiple defendants and involving the same complainant or complainants, may be consolidated for the purpose of holding a single mediation in the matter. Charges pending in multiple courts may be consolidated for purposes of mediation with the consent of those courts.
- (3) **Timing of Suggestion.** The court shall encourage parties to attend and participate in mediation as soon as practicable. Since there is no possibility of incarceration resulting from any agreement reached in mediation, the court is not required to provide a court-appointed attorney to a defendant prior to mediation.
- (4) **Notice to Parties.** When the parties have agreed to attend mediation, the court shall provide notice to the parties, either orally or in writing on a form prescribed by the North Carolina Administrative Office of the Courts (NCAOC), of the following: (i) the deadline for completion of the mediation process, (ii) the name of the mediator who will mediate the dispute or the name of the community mediation center who will provide the mediator, and (iii) the fact that the defendant may be required to pay the dismissal fee set forth in Rule 5(b)(2). In lieu of providing this information orally or in writing, the court may refer the complaining witness and defendant to a community mediation center, whose staff shall advise the parties of the above information.
- (5) **Motion for Mediation.** Any complainant or defendant may move the court, either orally or in writing, to have a mediation conducted in his or her dispute. If the motion is in writing, then the motion may be on a NCAOC form. The court shall determine whether the dispute is appropriate for referral to mediation.
- (6) **Screening.** After a screening of the case or parties, a mediator or a community mediation center to which the parties are referred for mediation shall advise the court if the matter is not appropriate for mediation.

Rule 2. Program Administration

Under N.C.G.S. § 7A-38.3D(c), a community mediation center may assist a judicial district in administering and operating its mediation program for criminal matters in district court. The court may delegate to a center responsibility for the scheduling of cases and the center may provide volunteer and/or staff mediators to conduct the mediations. The center shall also maintain files in such mediations; record caseload statistics and other information as required by the court, the Dispute Resolution Commission (Commission), or the NCAOC, including tracking the number of cases referred to mediation and the outcome of those mediations; and, in accordance with N.C.G.S. § 7A-38.7 and N.C.G.S. § 7A-38.3D(m), oversee the dismissal process for cases resolved in mediation.

Rule 3. Appointment of the Mediator

(a) **Authority to Appoint.** When the parties have agreed to attend mediation, the court shall appoint a mediator provided by a community mediation center, or shall designate a center to appoint a mediator to conduct the mediation. The mediator appointed shall be certified under Rule 7 or shall be working toward certification under the supervision of the center to which the dispute is referred for mediation.

(b) **Disqualification of the Mediator.** For good cause shown, a complainant or defendant may move the court to disqualify the mediator appointed to conduct the mediation. If the mediator is disqualified, then the court shall appoint a new mediator to conduct the mediation. Nothing in this subsection precludes a mediator from disqualifying himself or herself.

Rule 4. The Mediation

(a) **Scheduling the Mediation.** The mediator appointed to conduct the mediation, or the community mediation center to which the matter has been referred by the court for appointment of a mediator, shall be responsible for any scheduling that must be done prior to the mediation, any reporting required by these rules or local rules, and for maintaining any files that pertain to the mediation.

(b) **Where the Mediation Is to Be Held.** Mediation shall be held in the courthouse or, if a suitable space is available, in the offices of a community mediation center, or at any other place agreed upon by the mediator and parties.

(c) **Extending the Deadline for Completion.** The court may extend the deadline for completion of the mediation process upon its own motion or upon the suggestion of community mediation center staff.

(d) **Recesses.** The mediator may recess the mediation at any time and may set times for reconvening. If the time for reconvening is set before the mediation is

recessed, then no further notification is required for persons present at the mediation. In recessing a matter, the mediator shall consider whether the parties wish to continue the mediation and whether they are making progress toward resolving their dispute.

(e) **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.

Rule 5. Duties of the Parties

(a) **Attendance.**

(1) **Physical Attendance Required.** A complainant or defendant who has agreed to attend mediation must physically attend the proceeding until an agreement is reached or the mediator has declared an impasse.

(2) **Attendees.** The following persons may attend and participate in mediation:

a. **Parents or Guardians of a Minor Party.** A parent or guardian of a minor complainant or defendant who has been encouraged by the court to attend may attend and participate in mediation. However, the court shall encourage attendance by a parent or guardian only in consultation with the mediator, and the mediator may later excuse the participation of a parent or guardian if the mediator determines that the parent or guardian's presence is not helpful to the process.

b. **Attorneys.** Attorneys representing the parties may physically attend and participate in mediation. Attorneys may also participate by advising clients before, during, and after mediation sessions, including monitoring compliance with any agreement reached.

c. **Others.** In the mediator's discretion, others whose presence and participation is deemed helpful either to resolving the dispute or addressing an issue underlying it may be permitted to attend and participate, unless and until the mediator determines that their presence is no longer helpful. Mediators may exclude anyone wishing to attend and participate, but whose presence and participation the mediator deems would likely be disruptive or counterproductive.

- (3) **Exceptions to Physical Attendance.** A party or other person may be excused from physically attending the mediation and may be allowed to participate either by telephone or through an attorney:
 - a. by agreement of the complainant, defendant, and mediator;
or
 - b. by order of the court.
- (4) **Scheduling.** The complainant and defendant, and any parent, guardian, or attorney who will be attending the mediation, will:
 - a. make a good faith effort to cooperate with the mediator or community mediation center to schedule the mediation at a time that is convenient to all participants;
 - b. promptly notify the mediator or community mediation center of any significant scheduling concerns that may impact that person's ability to be present for mediation; and
 - c. notify the mediator or the community mediation center about any other concern that may impact a person's ability to attend and meaningfully participate—for example, the need for wheelchair access or for a deaf or foreign language interpreter.

(b) **Finalizing Agreement.**

- (1) **Written Agreement.** If an agreement is reached at the mediation, then the complainant and defendant are to ensure that the terms of the agreement are reduced to writing and signed by the parties. Agreements that are not reduced to writing and signed will not be enforceable. If no agreement is reached in mediation, an impasse will be declared and the matter will be referred back to the court.
- (2) **Dismissal Fee.** For charges to be dismissed by the district attorney, unless the parties agree to some other apportionment, the defendant shall pay a dismissal fee, as set out in N.C.G.S. § 7A-38.7 and N.C.G.S. § 7A-38.3D(m), to the clerk of superior court in the county where the case was filed and supply proof of payment to the community mediation center administering the program for the judicial district. Payment is to be made in accordance with the terms of the parties' agreement. The center shall, thereafter, provide the district attorney with a dismissal form, which may be a NCAOC form. In its discretion, the court may waive the dismissal fee under N.C.G.S. § 7A-38.3D(m) when the defendant is indigent,

unemployed, a full-time college or high school student, a recipient of public assistance, or for any other appropriate reason. The mediator shall advise the parties where and how to pay the fee.

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.

- (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.

Rule 7. Mediator Certification and Decertification

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

- (1) The applicant must be affiliated, at the time of application, with a community mediation center established under N.C.G.S. § 7A-38.5 as either a volunteer or staff mediator, and must have received the community mediation center's endorsement that he or she possesses the training, experience, and skills necessary to mediate criminal matters in district court.
- (2) The applicant must have the following training and experience:
- a. The applicant must:
 - 1. have a four-year degree from an accredited college or university; have four years of post-high school education through an accredited college, university, or junior college; have four years of full-time work experience; or have any combination thereof;
 - 2. have two years of experience as a staff or volunteer mediator at a community mediation center; or
 - 3. have an Advanced Practitioner Designation from the Association for Conflict Resolution.
 - b. The applicant must have completed either:
 - 1. twenty-four hours of training in a Commission-certified district criminal court mediation training program; or

2. forty hours of Commission-certified superior court or family financial mediation training and four hours of additional training about the rules, procedures, and practices for mediating criminal matters in district court.
- c. The applicant must:
1. observe at least two court-referred district court mediations for criminal matters, conducted by a mediator certified under these rules; and
 2. co-mediate or solo-mediate at least three court-referred district court mediations for criminal matters, under the observation of staff affiliated with a community mediation center whose district criminal court mediation training program has been certified by the Commission under Rule 8.

The observation, co-mediation, and solo-mediation requirements set forth in this subsection may be waived in the event the applicant demonstrates that she or he has at least five years of experience mediating criminal matters in district court, and the center which the applicant has served verifies the experience claimed.

- (3) The applicant must demonstrate familiarity with the statutes, rules, and practices governing mediations for criminal matters in district court in North Carolina;
- (4) 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. pending or 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; or
- h. civil judgments, tax liens, and bankruptcy filings that occurred within the ten years preceding the date that the initial or renewal application was filed with the Commission.

A mediator shall report to the Commission any of the above-enumerated matters arising subsequent to the disclosures reported on the initial or renewal application for certification within thirty days of receiving notice of the matter.

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.

- (5) The applicant must commit to serving as a district court mediator under the direct supervision of a community mediation center authorized under N.C.G.S. § 7A-38.5 for a period of at least two years.
- (6) The applicant must comply with the requirements of the Commission for continuing mediator education and training.
- (7) The applicant must submit proof of qualifications set out in this rule on a form provided by the Commission.

(b) The Mediation Network of North Carolina, or individual community mediation centers participating in the program, shall assist the Commission in implementing the certification process established in this rule by:

- (1) documenting subsection (a) of this rule for the mediator and the Commission;

- (2) reviewing the documentation with the mediator in a face-to-face meeting scheduled no less than thirty days from the mediator's request to apply for certification;
- (3) making a written recommendation on the applicant's certification to the Commission, which shall come from center staff familiar with the applicant and the applicant's character and experience; and
- (4) forwarding the documentation for subsection (a) of this rule and the recommendation to the Commission, along with the mediator's completed certification application form.

(c) A mediator's certification may be revoked or not renewed if, at any time, it is shown to the satisfaction of the Commission that a mediator no longer meets the qualifications described 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. Certification renewal shall be required every two years.

(d) A community mediation center may withdraw its affiliation with a mediator who has been certified under these rules. Such disaffiliation does not revoke the mediator's certification. A mediator's certification is portable, and a mediator may agree to be affiliated with a different center. However, to mediate criminal matters in district court under this program, a mediator must be affiliated with the community mediation center providing services in that judicial district. A mediator may be affiliated with more than one center and provide services in the county served by those centers.

A community mediation center that receives or initiates a complaint against a mediator who is affiliated with its program and certified under these rules shall notify the Commission and forward a copy of the complaint to the Commission within thirty days of its receipt by the center, regardless of whether the center was able to successfully resolve the complaint. For purposes of this rule, a "complaint" is a concern raised by a mediation participant, court official, attorney, or community mediation center staff member or volunteer that suggests: (i) that the mediator may have engaged in conduct that violates these rules, the Standards of Professional Conduct for Mediators, or any local court rules adopted to implement the program in a district the mediator serves; or (ii) that the mediator has engaged in conduct that raises an issue about the mediator's character or practice. If a community mediation center withdraws its affiliation with a mediator who has been certified under these rules, then the community mediation center shall notify the Commission within thirty days of the disaffiliation. The center shall cooperate with the Commission if it investigates any such complaints.

(e) Commission staff shall notify the executive director of the Mediation Network of North Carolina, and the executive director of the community mediation

center that is sponsoring the application of an applicant seeking certification as a district criminal court mediator, of any matter regarding the character, conduct, or fitness to practice of the applicant. Staff shall notify the executive director of the Mediation Network of North Carolina and the executive director of the community mediation center with whom a mediator is affiliated of any finding of probable cause by the Commission under Rule 9 of the Rules of the Dispute Resolution Commission, after review of any complaint filed against the mediator alleging an issue of character, conduct, or fitness to practice.

Rule 8. Certification of Mediation Training Programs

(a) Certified training programs for mediators who are seeking certification as district criminal court mediators shall consist of a minimum of twenty-four hours of instruction. The curriculum of such programs shall include the following topics:

- (1) Conflict resolution and mediation theory.
- (2) Mediation process and techniques, including the process and techniques of mediating criminal matters in district court.
- (3) Agreement writing.
- (4) Communication and information gathering.
- (5) Standards of conduct for mediators including, but not limited to, the Standards of Professional Conduct for Mediators.
- (6) Statutes, rules, forms, and practices governing mediations for criminal matters in district court.
- (7) Demonstrations of mediations for criminal matters in district court.
- (8) Simulations of mediations for criminal matters in district court, involving student participation as the mediator, victim, offender, and attorneys, which shall be supervised, observed, and evaluated by program faculty.
- (9) Courtroom protocol.
- (10) Domestic violence awareness.
- (11) Satisfactory completion of an exam by all students, testing their familiarity with the statutes, rules, and practices governing mediations for criminal matters in district court.

(b) A training program must be certified by the Commission before a mediator's attendance at the program may be used to satisfy the training requirement under this rule. Training programs attended prior to the promulgation of these rules or attended in other states may be approved by the Commission if they are in substantial compliance with the standards set forth in this rule.

- (c) Certification renewal shall be required every two years.

Rule 9. Local Rule Making

The chief district court judge of any judicial district conducting mediations under these rules is authorized to publish local rules, not inconsistent with these rules and N.C.G.S. § 7A-38.3D, implementing mediation in that district.

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