

IN THE SUPREME COURT OF NORTH CAROLINA

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ORDER AMENDING THE RULES OF MEDIATION  
FOR MATTERS BEFORE THE CLERK OF SUPERIOR COURT

Pursuant to subsection 7A-38.3B(b) of the General Statutes of North Carolina, the Court hereby amends Rule 4 of the Rules of Mediation for Matters Before the Clerk of Superior Court.

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**Rule 4. Duties of Parties, Attorneys, and Other Participants in Mediations**

(a) **Attendance.**

- (1) All persons ordered by the clerk to attend a mediation conducted under these rules shall attend the mediation using remote technology; for example, by telephone, videoconference, or other electronic means. The mediation shall conclude when an agreement is reduced to writing and signed, as provided in subsection (b) of this rule, or when an impasse is declared. Notwithstanding this remote attendance requirement, the mediation may be conducted in person if:
  - a. the mediator and all persons required to attend the mediation agree to conduct the mediation in person and to comply with all federal, state, and local safety guidelines that have been issued; or
  - b. the clerk, upon motion of a person required to attend the mediation and notice to the mediator and to all other persons required to attend the mediation, so orders.
- (2) Any nongovernmental entity ordered to attend a mediation conducted under these rules shall be represented at the mediation by an officer, employee, or agent who is not the entity's outside counsel and who has authority to decide on behalf of the entity whether, and on what terms, to settle the matter.
- (3) Any governmental entity ordered to attend a mediation conducted under these rules shall be represented at the mediation by an employee or agent who is not the entity's outside counsel and who has authority to decide on behalf of the entity whether, and on what terms, to settle the matter; provided, however, that if proposed settlement terms can be approved only by a governing

board, the employee or agent shall have authority to negotiate on behalf of the governing board.

- (4) An attorney ordered to attend a mediation under these rules has satisfied the attendance requirement when at least one counsel of record for any person ordered to attend has attended the mediation.
- (5) Other persons may participate in a mediation at the discretion of the mediator.
- (6) Persons ordered to attend a mediation shall promptly notify the mediator, after selection or appointment, of any significant problems they have with the dates for mediation sessions before the completion deadline, and shall inform the mediator of any problems that arise before an anticipated mediation session is scheduled by the mediator.
- (7) Any person may be excused from the requirement to attend a mediation with the consent of all persons required to attend the mediation and the mediator.

(b) **Finalizing Agreement.**

- (1) If an agreement is reached at the mediation, in matters that, as a matter of law, may be resolved by the parties by agreement, then the parties to the agreement shall reduce the terms of the agreement to writing and sign the writing along with their counsel. The parties shall designate a person who will file a consent judgment or a voluntary dismissal with the clerk, and that person shall sign the mediator's report. If an agreement is reached prior to or during a recess of the mediation, then the parties shall inform the mediator and the clerk that the matter has been settled and, within ten calendar days of the agreement, file a consent judgment or voluntary dismissal with the court.
- (2) In all other matters, including guardianship and estate matters, if an agreement is reached upon some or all of the issues at the mediation, then the persons ordered to attend the mediation shall reduce the terms of the agreement to writing and sign the writing along with their counsel, if any. Such agreements are not binding upon the clerk, but may be offered into evidence at the hearing of the matter and may be considered by the clerk for a just and fair resolution of the matter. Evidence of statements made and conduct occurring in a mediation where an agreement is reached is admissible under N.C.G.S. § 7A-38.3B(g)(3).

All written agreements reached in such matters shall include the following language in a prominent location in the

document: “This agreement is not binding on the clerk but will be presented to the clerk as an aid to reaching a just resolution of the matter.”

(c) **Payment of the Mediator’s Fee.** The persons ordered to attend the mediation shall pay the mediator’s fee as provided by Rule 7.


(d) **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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This amendment to the Rules of Mediation for Matters Before the Clerk of Superior Court becomes effective on 23 November 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 17th day of November, 2020.

  
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 17th day of November, 2020.

  
AMY L. FUNDERBURK  
Clerk of the Supreme Court