

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 5 of the Rules of Mediation for Matters in District Criminal Court.

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Rule 5. Duties of the Parties

(a) **Attendance.**

- (1) **Physical Attendance Required Through the Use of Remote Technology.** A complainant or defendant who has agreed to attend mediation ~~must physically attend the proceeding until~~ shall attend the mediation using remote technology; for example, by telephone, videoconference, or other electronic means. The mediation shall conclude when an agreement is reached or ~~when the mediator has declared~~ declares 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—the Remote Attendance Requirement.~~** ~~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.~~ Notwithstanding the remote attendance requirement in subsection (a)(1) of this rule, the mediation may be conducted in person if:

a. ~~by agreement of the complainant, defendant, and mediator; or the mediator, complainant, and defendant agree to conduct the mediation in person and to comply with all federal, state, and local safety guidelines that have been issued; or~~

b. ~~by order of the court so orders.~~

(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.

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These amendments to the Rules of Mediation for Matters in District Criminal Court become effective on 10 June 2020.

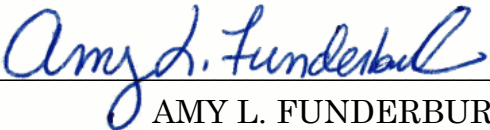
This order shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 3rd day of June, 2020.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 4th day of June, 2020.



AMY L. FUNDERBURK
Clerk of the Supreme Court