

**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 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;

Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions – Rule 8

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:
  - 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 professional, management, or administrative experience in a professional, business, or governmental entity; or
  - ii. ten years of professional, management, or administrative experience in a professional, business, or governmental entity, and possesses a four-year college degree from an accredited institution.

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

Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions – Rule 8

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. pending or closed grievances or complaints filed with a professional licensing, certifying, or regulatory body, whether in North Carolina, another state, or another country;

Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions – Rule 8

- 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, or 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.

- (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.

Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions – Rule 8

- (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.