

CLERK RULES – EFFECTIVE JANUARY 1, 2012

RULE 1. INITIATING MEDIATION IN MATTERS BEFORE THE CLERK.

- A. **PURPOSE OF MANDATORY MEDIATION.** These Rules are promulgated pursuant to N.C.G.S. § 7A-38.3B to implement mediation in certain cases within the clerk’s jurisdiction. The procedures set out here are designed to focus the parties’ attention on settlement and resolution rather than on preparation for contested hearings and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in other settlement efforts voluntarily either prior to or after the filing of a matter with the clerk.
- B. **DUTY OF COUNSEL TO CONSULT WITH CLIENTS AND OPPOSING COUNSEL CONCERNING SETTLEMENT PROCEDURES.** In furtherance of this purpose, counsel, upon being retained to represent a party to a matter before the clerk, shall discuss the means available to the parties through mediation and other settlement procedures to resolve their disputes without resort to a contested hearing. Counsel shall also discuss with each other what settlement procedure and which neutral third party would best suit their clients and the matter in controversy.
- C. **INITIATING THE MEDIATION BY ORDER OF THE CLERK.**
- (1) **Order by The Clerk of Superior Court.** The clerk of superior court of any county may, by written order, require all persons and entities identified in Rule 4 to attend a mediation in any matter in which the clerk has original or exclusive jurisdiction, except those matters under N.C.G.S. Chapters 45 and 48 and those matters in which the jurisdiction of the clerk is ancillary.
- (2) **Content of Order.** The order shall be on an North Carolina Administrative Office of the Courts (NCAOC) form and shall:
- (a) require that a mediation be held in the case;
 - (b) establish deadlines for the selection of a mediator and completion of the mediation;
 - (c) state the names of the persons and entities who shall attend the mediation;
 - (d) state clearly that the persons ordered to attend have the right to select their own mediator as provided by Rule 2;

- (e) state the rate of compensation of the court appointed mediator in the event that those persons do not exercise their right to select a mediator pursuant to Rule 2; and
 - (f) state that those persons shall be required to pay the mediator's fee in shares determined by the clerk.

- (3) **Motion for Court Ordered Mediation.** In matters not ordered to mediation, any party, interested persons or fiduciary may file a written motion with the clerk requesting that mediation be ordered. Such motion shall state the reasons why the order should be allowed and shall be served in accordance with Rule 5 of the North Carolina Rules of Civil Procedure (N.C.R.Civ.P.) on non-moving parties, interested persons and fiduciaries designated by the clerk or identified by the petitioner in the pleadings. Objections to the motion may be filed in writing within five days after the date of the service of the motion. Thereafter, the clerk shall rule upon the motion without a hearing and notify the parties or their attorneys of the ruling.

- (4) **Informational Brochure.** The clerk shall serve a brochure prepared by the Dispute Resolution Commission (Commission) explaining the mediation process and the operations of the Commission along with the order required by Rule 1.C.(1) and 1.C.(3).

- (5) **Motion to Dispense With Mediation.** A named party, interested person, or fiduciary may move the clerk of superior court to dispense with a mediation ordered by the clerk. Such motion shall state the reasons the relief is sought and shall be served on all persons ordered to attend and the mediator. For good cause shown, the clerk may grant the motion.

- (6) **Dismissal of Petition For the Adjudication of Incompetence.** The petitioner shall not voluntarily dismiss a petition for adjudication of incompetence after mediation is ordered.