

**MSC RULES – EFFECTIVE DATE JANUARY 1, 2012**

**RULE 2. DESIGNATION OF MEDIATOR**

- A. DESIGNATION OF CERTIFIED MEDIATOR BY AGREEMENT OF PARTIES.** The parties may designate a mediator certified pursuant to these Rules by agreement within 21 days of the court's order. The plaintiff's attorney shall file with the court a Designation of Mediator by Agreement within 21 days of the court's order, however, any party may file the designation. The party filing the designation shall serve a copy on all parties and the mediator designated to conduct the settlement conference. Such designation shall state the name, address and telephone number of the mediator designated; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the designation and rate of compensation; and state that the mediator is certified pursuant to these Rules. The notice shall be on a NCAOC form.
- B. APPROVAL OF PARTY NOMINEE ELIMINATED.** As of January 1, 2006, the former Rule 2.B rule allowing the approval of a non-certified mediator is rescinded. Beginning on that date, the court shall appoint mediators certified by the Dispute Resolution Commission (Commission), pursuant to Rule 2.C which follows.
- C. APPOINTMENT OF MEDIATOR BY THE COURT.** If the parties cannot agree upon the designation of a mediator, the plaintiff or plaintiff's attorney shall so notify the court and request, on behalf of the parties, that the senior resident superior court appoint a mediator. The motion must be filed within 21 days after the court's order and shall state that the attorneys for the parties have had a full and frank discussion concerning the designation of a mediator and have been unable to agree. The motion shall be on a form approved by the NCAOC.

Upon receipt of a motion to appoint a mediator, or failure of the parties to file a Designation of Mediator by Agreement with the court within 21 days of the court's order, the senior resident superior court judge shall appoint a mediator, certified pursuant to these Rules, who has expressed a willingness to mediate actions within the judge's district.

In making such appointments, the senior resident superior court judge shall rotate through the list of available certified mediators. Appointments shall be made without regard to race, gender, religious affiliation or whether the mediator is a licensed attorney. The senior resident superior court judge shall retain discretion to depart in a specific case from a strict rotation when, in the judge's discretion, there is good cause to do so.

Certified mediators who do not reside in the judicial district or a county contiguous to the judicial district, shall be included in the list of mediators available for appointment only if, on an annual basis as determined by the Commission, they request each senior resident superior court judge in whose district they wish to be appointed to be put on the appointment list. Said letters shall be addressed to such senior resident superior court judges, but be mailed to the offices of the Commission. The Commission shall coordinate the compilation and distribution of appointment lists for each judicial district.

The Commission shall furnish to the senior resident superior court judge of each judicial district a list of those certified superior court mediators requesting appointments in that district. Said list shall contain the mediators' names, addresses and telephone numbers and shall be provided electronically through the Commission's website at [www.ncdrc.org](http://www.ncdrc.org). The Commission shall promptly notify the senior resident superior court judge of any disciplinary action taken with respect to a mediator on the list of certified mediators for the judicial district.

- D. MEDIATOR INFORMATION DIRECTORY.** To assist the parties in designating a mediator, the Commission shall assemble, maintain and post on its website a list of certified superior court mediators. The list shall supply contact information for mediators and identify court districts that they are available to serve. Where a mediator has supplied it to the Commission, the list shall also provide biographical information, including information about an individual mediator's education, professional experience and mediation training and experience.
  
- E. DISQUALIFICATION OF MEDIATOR.** Any party may move the senior resident superior court judge of the district where the action is pending for an order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be designated or appointed pursuant to Rule 2. Nothing in this provision shall preclude mediators from disqualifying themselves.