

MSC RULES – EFFECTIVE DATE JANUARY 1, 2012

RULE 6. AUTHORITY AND DUTIES OF MEDIATORS

A. AUTHORITY OF MEDIATOR.

- (1) Control of Conference.** The mediator shall at all times be in control of the conference and the procedures to be followed. However, the mediator's conduct shall be governed by Standards of Professional Conduct for Mediators (Standards) promulgated by the Supreme Court which shall contain a provision prohibiting mediators from prolonging a conference unduly.
- (2) Private Consultation.** The mediator may communicate privately with any participant prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.

B. DUTIES OF MEDIATOR.

- (1)** The mediator shall define and describe the following at the beginning of the conference:

 - (a)** The process of mediation;
 - (b)** The differences between mediation and other forms of conflict resolution;
 - (c)** The costs of the mediated settlement conference;
 - (d)** That the mediated settlement conference is not a trial, the mediator is not a judge and the parties retain their right to trial if they do not reach settlement;
 - (e)** The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
 - (f)** Whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - (g)** The inadmissibility of conduct and statements as provided by N.C.G.S. § 7A-38.1;

- (h) The duties and responsibilities of the mediator and the participants; and
 - (i) That any agreement reached will be reached by mutual consent.
- (2) **Disclosure.** The mediator has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice or partiality.
- (3) **Declaring impasse.** It is the duty of the mediator to determine in a timely manner that an impasse exists and that the conference should end. To that end, the mediator shall inquire of and consider the desires of the parties to cease or continue the conference.
- (4) **Reporting Results of Mediation.**
 - (a) The mediator shall report to the court the results of the mediated settlement conference and any settlement reached by the parties prior to or during a recess of the conference. Mediators shall also report the results of mediations held in other superior court civil cases in which a mediated settlement conference was not ordered by the court. Said report shall be filed on a NCAOC form within 10 days of the conclusion of the conference or of being notified of the settlement and shall include the names of those persons attending the mediated settlement conference if a conference was held. Local rules shall not require the mediator to send a copy of the parties' agreement to the court.
 - (b) If an agreement upon all issues is reached at, prior to or during a recess of the conference, the mediator's report shall state whether the action will be concluded by consent judgment or voluntary dismissal(s) and the name, address and telephone number of the person(s) designated by the parties to file such consent judgment or dismissal(s) with the court. The mediator shall advise the parties that Rule 4.C requires them to file their consent judgment or voluntary dismissal with the court within 30 days or within 90 days if the state or a political subdivision thereof is a party to the action, or before expiration of the mediation deadline, whichever is longer. The mediator shall indicate on the report that the parties have been so advised.
 - (c) The Commission or the NCAOC may require the mediator to

provide statistical data for evaluation of the mediated settlement conference program.

(d) Mediators who fail to report as required by this rule shall be subject to sanctions by the senior resident superior court judge. Such sanctions shall include, but not be limited to, fines or other monetary penalties, decertification as a mediator and any other sanction available through the power of contempt. The senior resident superior court judge shall notify the Commission of any action taken against a mediator pursuant to this section.

(5) **Scheduling and Holding the Conference.** It is the duty of the mediator to schedule the conference and conduct it prior to the conference completion deadline set out in the court's order. The mediator shall make an effort to schedule the conference at a time that is convenient with all participants. In the absence of agreement, the mediator shall select a date and time for the conference. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order of the senior resident superior court judge.

A mediator selected by agreement of the parties shall not delay scheduling or holding a conference because one or more of the parties has not paid an advance fee deposit required by that agreement.