

**LOCAL RULES
FOR
SUPERIOR COURT MEDIATED SETTLEMENT CONFERENCES
TENTH JUDICIAL DISTRICT
WAKE COUNTY
EFFECTIVE FEBRUARY 6, 2008**

Under authority of the North Carolina General Statutes, Section 7A-38 and Rules of the Supreme Court of North Carolina adopted thereunder, the following local rules are hereby established to further implement the program of mediated settlement conferences in the Superior Court of Wake County.

RULE 1. ORDER FOR MEDIATED SETTLEMENT CONFERENCE

- (a) Order by Senior Resident Superior Court Judge. The Senior Resident Superior Court Judge of the Tenth Judicial District may, by written order, require parties and their representatives to attend a pretrial mediated settlement conference in any civil action pending in the Superior Court of the Tenth Judicial District except for an action in which a party is seeking the issuance of an extraordinary writ or is appealing the revocation of a motor vehicle operator's license..
- (b) Timing of the Order. The Senior Resident Superior Court Judge may issue the order at any time after the time for the filing of answers has expired. Rules 1(c) and 3(b) herein shall govern the content of the order and the date of completion of the conference.
- (c) Content of Order. The court's order shall (1) require that a mediated settlement conference be held in the case; (2) establish a deadline for the completion of the conference; (3) state clearly that the parties have the right to select their own mediator as provided by Rule 2; (4) state the rate of compensation of the court appointed mediator in the event that the parties do not exercise their right to select a mediator pursuant to Rule 2; and (5) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the Court.
- (d) Motion to Dispense with Mediated Settlement Conference. A party may move the Senior Resident Superior Court Judge, within 10 days after the Court's order, to dispense with the conference. Such motion shall state the reasons the relief is sought. For good cause shown, the Senior Resident Superior Court Judge may grant the motion. Such motion shall be mailed to the office of the Senior Resident Superior Court Judge at the address shown below and to all opposing attorneys or unrepresented parties, who may file written objections, and the grounds thereof,

with the office of the Senior Resident Superior Court Judge, within 7 days after the date of the motion. Thereafter, the Senior Resident Superior Court Judge will rule upon such motion without a hearing and notify the parties or their attorneys of the ruling.

- (e) Motion for Court Ordered Mediated Settlement Conference. In cases not ordered to mediated settlement conference, any or all parties may move the Senior Resident Superior Court Judge to order such a conference. Such motion shall state the reasons why the order should be allowed and shall be served on non-moving parties. Objections may be filed in writing with the Senior Resident Superior Court Judge within 10 days after the date of the service of the motion. Thereafter, the Judge shall rule upon the motion without a hearing and notify the parties or their attorneys of the ruling.
- (f) Motion to Authorize the Use of Other Settlement Procedures. A party may move the Senior Resident Superior Court Judge

RULE 2. SELECTION OF MEDIATOR

- (a) Selection of Certified Mediator by Agreement of Parties. The parties appearing of record may select a mediator certified pursuant to the rules of the Supreme Court of North Carolina. The plaintiff or the plaintiff's attorney shall file with the court an approved Designation of Mediator notice form indicating Selection of Certified Mediator by Agreement within 21 days of the court's order. This notice shall state the name, address and telephone number of the mediator; state that the mediator and the parties have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to rules of the Supreme Court.
- (b) Nomination and Court Approval of Non-Certified Mediator. The parties may select a mediator who does not meet the certification requirements of the Supreme Court but who, in the opinion of the parties and the Senior Resident Superior Court Judge, is otherwise qualified by training or experience to mediate all or some of the issues in the action and who agrees to mediate indigent cases without pay.

If the parties select a Non-Certified mediator, the plaintiff or the plaintiff's attorney shall file with the Senior Resident Superior Court Judge an approved Designation of Mediator form indicating Nomination of Non-Certified Mediator within 21 days of the court's order. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and the parties have agreed upon the selection and rate of compensation.

The Senior Resident Superior Court Judge shall rule on said nomination without a hearing, shall approve or disapprove of the parties nomination and shall notify the parties of the court's decision.

- (c) Appointment of Mediator by the Court. If the parties cannot agree upon the selection of a mediator, the plaintiff or the plaintiff's attorney shall submit a Designation of Mediator form indicating a Motion for Court Appointment of Mediator to the Senior Resident Superior Court Judge on behalf of the parties. The motion must be filed with the Senior Resident Superior Court Judge within 21 days after the court's order and shall state that the parties and their attorneys have had a full and frank discussion concerning the selection of a mediator and have been unable to agree.

The motion shall state whether any party prefers a certified attorney mediator, and if so, the Senior Resident Superior Court Judge shall appoint a certified attorney mediator. The motion may state that all parties prefer a certified, non-attorney mediator, and if so, the Senior Resident Superior Court Judge shall appoint a certified, non-attorney mediator if one is on the list of certified mediators desiring to mediate cases in the district. If no preference is expressed, the Senior Resident Superior Court Judge may appoint a certified attorney mediator or a certified non-attorney mediator.

Upon receipt of a motion to appoint a mediator, or in the event the plaintiff's attorney has not filed a Notice of Selection or Nomination of a Non-Certified Mediator 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, under a procedure established by said Judge and set out in Local Rules or other written document. Only mediators who agree to mediate indigent cases without pay and have indicated their desire to mediate cases in the Tenth Judicial District shall be appointed.

- (d) Mediator Information Directory. To assist the parties in the selection of a mediator by agreement, a central directory of information on all certified mediators who wish to mediate cases in the Tenth Judicial District will be collected and maintained in loose leaf forms provided by the Administrative Office of the Courts and be kept in one or more notebooks and will be made available for inspection by attorneys and parties in the office of the Clerk of Court for the Tenth Judicial District.
- (e) Disqualification of a Mediator. Any party may move a Resident or Presiding Superior Court Judge for the Tenth Judicial District for an order disqualifying the mediator. For good cause, such order shall be entered. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to this Rule. If such order is entered, the moving party must provide a copy of the order to the Senior Resident Superior Court Judge within 5 days of the date of the order. Nothing in this provision shall preclude mediators from disqualifying themselves upon written notice to the Senior Resident Superior Court Judge and the parties.

RULE 3. THE MEDIATED SETTLEMENT CONFERENCE

- (a) Where Conference is to be Held. Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the Wake County Courthouse or other public or community building in Wake County. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice to all attorneys, unrepresented parties and other persons and entities required to attend of the time and place where the conference will be held.
- (b) When Conference is to be Held. As a guiding principle, the conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date.

The court's order issued pursuant to Rule 1(b) shall clearly state a date of completion for the conference. Said date shall not be less than 120 days nor more than 180 days after issuance of the court's order.

- (c) Request to Extend Date of Completion. A party, or the mediator, may request the Senior Resident Superior Court Judge to extend the deadline for completion of the conference. Such request shall state the reasons the continuance is sought and shall be served by the movant upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the office of the Senior Resident Superior Court Judge.

The Senior Resident Superior Court Judge may grant the request and enter an order setting a new date for the completion of the conference, which date may be set at any time prior to trial. Said order shall be delivered to all parties and the mediator by the person who sought the extension.

- (d) Recesses. The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.
- (e) The Mediated Settlement Conference Is Not To Delay Other Proceedings. It shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the Senior Resident Court Judge.

RULE 4. DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS

- (a) Attendance. The following persons shall physically attend the entire mediated settlement conference until an agreement is reduced to writing and signed as provided by Rule 4(b) or an impasse has been declared, unless excused by the

Senior Resident Superior Court Judge or by the Mediator with approval of all parties and attorneys.

- (1) Parties.
 - (i) All individual parties.
 - (ii) Any party that is not a natural person or a governmental entity shall be represented at the conference by an officer, employee or agent who is not such party's outside counsel and who has been authorized to decide on behalf of such party whether and on what terms to settle the action.
 - (iii) Any party that is a governmental entity shall be represented at the conference by an employee or agent who is not such party's outside counsel and who has authority to decide on behalf of such party whether and on what terms to settle the action; provided, if under law proposed settlement terms can be approved only by a board, the representative shall have authority to negotiate on behalf of the party and to make a recommendation to that board.
- (2) Insurance Company Representatives. A representative of each liability insurance carrier, uninsured motorist insurance carrier, and underinsured motorist insurance carrier which may be obligated to pay all or part of any claim presented in the action. Each such carrier shall be represented at the conference by an officer, employee or agent, other than the carrier's outside counsel, who has the authority to make a decision on behalf of such carrier or who has been authorized to negotiate on behalf of the carrier and can promptly communicate during the conference with persons who have such decision-making authority.
- (b) Notifying Lien Holders. Any party or attorney who has received notice of alien or other claim upon proceeds recovered in the action shall notify said lien holder or claimant of the date, time, and location of the mediated settlement conference and shall request said lien holder or claimant to attend the conference or make a representative available with whom to communicate during the conference.
- (c) Finalizing Agreement. Upon reaching agreement, either before or during the mediation conference, parties and others with settlement authority shall immediately reduce it to writing and sign it along with their counsel. By stipulation of the parties, the agreement may be electronically or stenographically recorded. A consent judgment or one or more voluntary dismissals shall be filed with the Court by such persons as the parties shall designate.
- (d) Reporting Settlement. Upon reaching a settlement agreement before or during the conference, the parties and others with settlement authority, shall provide a copy of the executed written agreement of the mediator with 7 days of such settlement. The

mediator shall attach a copy of the written agreement to the Report of Mediator and mail both to the Senior Resident Superior Court Judge. Failure of the parties to provide a copy of the written agreement to the mediator on a timely basis may result in sanctions.

RULE 5. SANCTIONS FOR FAILURE TO ATTEND

If any person required to attend the conference pursuant to Rule 4 of these Local Rules fails to attend without good cause, a Resident or Presiding Judge may impose upon the party or person any appropriate monetary sanction, including but not limited to, the payment of fines,, attorneys fees, mediator fees, expenses and losses of earning incurred by persons attending the conference.

A party seeking sanctions against another party or personal shall do so in a written motion stating the grounds for the motion and the relief sought. Said motion shall be served upon all parties and on any person against whom sanctions are being sought. If the court imposes sanctions, it shall do so, after notice and a hearing, in a written order, making findings of fact supported by substantial evidence and conclusions of law.

RULE 6. AUTHORITY AND DUTIES OF MEDIATOR

(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.
- (2) Private Consultation. The mediator may meet and consult privately with any participant or counsel during the conference.
- (3) Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

(b) Duties of Mediator.

- (1) The Mediator shall define and describe the following to the parties 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) The facts 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 statement as provided by G.S. 7A-38.1(1);
 - (h) The fact 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 timely determine that an impasse exists and that the conference should end.
 - (4) Reporting Results of Conference. The mediator shall submit a Report of Mediator to the Senior Resident Superior Court Judge which indicates the results of the conference. This report shall be filed with 2 weeks of the conclusion of the conference or upon the receipt of a copy of a written settlement agreement, whichever comes first.

If an agreement was reached, the report shall state whether the action will be concluded by consent agreement or voluntary dismissal and shall identify the persons designated to file such consent agreement or dismissals. The mediator's report shall inform the court of the absence of any party, attorney, or insurance representative who was absent without permission from the conference.

The mediator shall attach the written settlement agreement prepared by the parties to the Report of Mediator.

- (5) Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and to conduct and conclude the conference prior to the conference completion deadline set out in the court's order. 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.
- (c) Failure of Mediator to Comply with Rule 6. The Senior Resident Superior Court Judge reserves the right to withhold future appointment of any mediator who does not fully comply with the requirements of Rule 6.

RULE 7. COMPENSATION OF THE MEDIATOR

- (a) By Agreement. When the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.
- (b) By Court Order. When the mediator is appointed by the court, the mediator shall be compensated by the parties at an hourly rate set by the Senior Resident Superior Court Judge for all court appointed mediators as authorized by the Supreme Court Rules.
- (c) Indigent Cases. No party found to be indigent by the court for the purposes of these rules shall be required to pay a mediator appointed or selected pursuant to these rules. Any mediator conducting a settlement conference pursuant to these rules shall waive the payment of fees from parties found by the court to be indigent.

If any party contends that he or she is indigent and cannot pay his or her portion of the mediator's fee, that party must file a motion to be relieved of payment of such fee. Said motion shall be made on an approved Petition And Order For Relief From Obligation To Pay Mediator's Fee form available in the Office of the Senior Resident Superior Court Judge. This form must be submitted to the mediator at the conclusion of the conference in lieu of payment. Said motion will be heard subsequent to the completion of the conference or, if the parties do not settle their case, subsequent to the trial of the action. Thereafter, the Senior Resident Judge shall determine whether the movant is unable to pay his or her share of the mediator's fee, and if he so finds, shall enter an order granting the relief sought. The judge may take into consideration the outcome of the action and whether a judgment was rendered or settlement obtained in the movant's favor.

- (d) Payment of Compensation By Parties. Unless otherwise agreed to by the parties or ordered by the court, costs of the mediated settlement conference shall be paid in equal shares by the parties. Multiple parties shall be considered once party when they are represented by the same counsel. Parties obligated to pay a share of the costs shall pay them equally. Payment shall be due upon completion of the conference. Parties who content indigent status must file the Petition Form as described in Rule 7(c).
- (e) Sanctions For Failure to Pay Mediator's Fee. Except when excused by these rules or by order of the court, failure of a party to make timely payment of his or her share of a mediator's fee, or failure of parties contending indigent status to file the Petition Form as described in Rule 7(c) at the conclusion of the conference shall constitute contempt of court and may result in the imposition of any and all lawful sanctions.

RULE 8. COMMUNICATION WITH COURT

All communications concerning mediated settlement conferences in the Tenth Judicial District should be addressed to the Trial Court Administrator or other person designated by the Senior Resident Judge, P.O. Box 1916, Raleigh, NC 27602, Telephone No. (919) 755-4194.

This 23rd day of February, 1996.

Robert L. Farmer
Senior Resident Superior Court Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

IN RE:)
AMENDMENT TO LOCAL)
RULES FOR MEDIATION)

ADMINISTRATIVE ORDER

Local Rules for Superior Court Mediated Settlement Conferences (Tenth Judicial District) are hereby amended by adding a new paragraph to the end of Rule 2(c) to read as follows:

“The Trial Court Administrator shall maintain a list of Certified Mediators who reside or maintain offices in the Third Superior Court Division (Wake, Durham, Orange, Chatham, Alamance, Caswell, Person, Granville, Franklin, Vance and Warren Counties) and who certify in writing annually to the Senior Resident Judge that they wish to mediate in this judicial district, are familiar with the Local Mediation Rules of this district and will comply with those rules and the Supreme Court Rules. When the parties do not timely select a mediator, the general procedure for judicial appointment shall be to appoint the next mediator on this list. However, the Senior Resident Judge maintains the discretion to depart from this practice in a particular case.”

This modification shall become effective as of June 15, 2005.

So ordered this, the 15th day of June, 2005.

DONALD W. STEPHENS
SENIOR RESIDENT SUPERIOR COURT JUDGE

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

IN RE:)
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MODIFICATION TO LOCAL)
RULES FOR MEDIATION)
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**ADMINISTRATIVE ORDER
MODIFYING LOCAL MEDIATION
RULES**

Local Rules for Superior Court Mediated Settlement Conferences (Tenth Judicial District – Promulgated July 1, 1994 and amended by Administrative Order dated June 15, 2005) are hereby modified and amended in the following manner:

1. The first paragraph of the Local Rules is rewritten to read as follows:
Under authority of the North Carolina General Statutes, Section 7A-38 and Rules of the Supreme Court of North Carolina adopted thereunder including the “Revised Rules Implementing Statewide Mediated Settlement Conferences and other Settlement Procedures in Superior Court civil actions” effective March 1, 2006, the following local rules are hereby established to further implement the program of mediated settlement conferences in the Superior Court of Wake County.
2. Rule 1(a) is rewritten as follows:
(b) Order by Senior Resident Superior Court Judge. The Senior Resident Superior Court Judge of the Tenth Judicial District may, by written order, require parties and representatives to attend a pretrial mediated settlement conference in any civil action pending in the Superior Court of the Tenth Judicial District. However, in the absence of some compelling good cause, the Court will not compel mediation in an action for declaratory judgment, or an administrative appeal, or one in which a party is seeking the issuance of an extraordinary writ or is appealing the revocation of a motor vehicle operator’s license.
3. Rule 6(b)(4) is amended to delete the requirement that the mediator should submit a copy of any settlement agreement by deleting the last sentence of that section.

These Local Rules as modified shall become effective immediately and shall constitute the Local Rules for Mediated Settlement Conferences for the Tenth Judicial District.

A copy of this order shall be attached to the July 1, 1994 Local Rules.

So ordered this, the 6th day of February, 2008.

DONALD W. STEPHENS
SENIOR RESIDENT SUPERIOR COURT JUDGE