

STATE OF NORTH CAROLINA
COUNTIES OF CARTERET,
CRAVEN & PAMLICO


IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
3B JUDICIAL DISTRICT

ADMINISTRATIVE ORDER

Pursuant to North Carolina General Statutes § 7A-38.4A, any and all family law cases filed on or after March 1, 2007 pursuant to Chapter 50 of the North Carolina General Statutes, *shall be* mediated in accordance with the rules and procedures outlined in the attached *Rules for the 3B Judicial District Regarding Mediation of All Family Law Cases*. This Administrative Order and the attached rules thereto *shall not apply* to those actions praying only for absolute divorce, and which are brought pursuant to North Carolina General Statutes § 50-10.

IT IS THEREFORE ORDERED, that the attached *Rules for the 3B Judicial District Regarding Mediation of All Family Law Cases* are hereby adopted for the 3B Judicial District in accordance with the authority of the undersigned Chief District Court Judge. These adopted rules supersede any previous rules which may conflict with the procedures set forth therein.

So Ordered, this the 1st day of March, 2007.


THE HONORABLE JERRY F. WADDELL
CHIEF DISTRICT COURT JUDGE
3B JUDICIAL DISTRICT

RULES FOR THE 3B JUDICIAL DISTRICT
REGARDING MEDIATION OF ALL FAMILY LAW CASES

RULE 1. INITIATING SETTLEMENT PROCEDURES

A. PURPOSE AND SCOPE OF SETTLEMENT PROCEDURES.

Pursuant to G.S. 7A-38.4A, these Rules are promulgated to implement a system of settlement events which are designed to focus the parties' attention on settlement rather than on trial preparation 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 settlement procedures voluntarily at any time before or after those ordered by the Court pursuant to these Rules.

B. APPLICATION.

These rules shall apply to all actions brought pursuant to Chapter 50 of the North Carolina General Statutes in the 3B Judicial District except for those actions praying only for absolute divorce and brought pursuant to N.C.G.S. 50-10.

C. ORDERING SETTLEMENT PROCEDURES.

Nothing herein shall prevent the Court from addressing any issues as might be appropriate prior to a mediated settlement conference. Nothing herein prohibits either party from calendaring or scheduling hearings as might be necessary in order to address temporary issues prior to mediation. No case shall, however, be calendared for final hearing on any issue unless the parties have participated in a mediation process in conformity with these rules or otherwise consent.

RULE 2. SCHEDULING SETTLEMENT PROCEDURES.

A. FILING OF ACTION.

Upon the filing of any action pursuant to Chapter 50 of the North Carolina General Statutes, the moving party shall file AOC Form 811 designating the case for mediation. The parties shall use AOC Form 812 or other such form as may be developed to use in conjunction with these Rules in order to select a mediator. These forms shall be signed by a Deputy or Assistant Clerk of Superior Court as designated by the Senior Resident Superior Court Judge for the 3B Judicial District. The parties shall have 60 days to select a mediator. The mediated settlement conference shall be held within 150 days from the date of the filing of the action. The Court shall dispense with a requirement to attend a mediated settlement conference or other settlement procedure only for good cause shown.

B. CONTENT OF ORDER.

The mediation order shall (1) require the mediated settlement conference be held in the case; (2) establish a deadline for the completion of the conference or proceeding; and (3) state that the parties shall be required to equally pay the mediator's fee at the conclusion of the settlement conference or proceeding unless otherwise ordered by the Court. The mediation order entered by the parties as set forth above shall be filed by the Clerk in the case file.

C. MOTION TO DISPENSE WITH SETTLEMENT PROCEDURES.

A party may move the Court to dispense with the mediated settlement conference or other settlement procedure. Such motion shall be in writing and shall state the reasons the relief is sought. For good cause shown, the Court may grant the motion. Such good cause may include, but not be limited to, the fact that the parties have participated in a settlement procedure such as non-binding arbitration or early neutral evaluation prior to the Court's Order to participate in a mediated settlement conference or have elected to resolve their case through arbitration under the Family Law Arbitration Act (G.S. 50-41, et seq.) or that one of the parties has alleged domestic violence. The Court may also dispense with the mediated settlement conference for good cause upon its own motion.

RULE 3. SELECTION OF FAMILY MEDIATOR.

A. SELECTION BY AGREEMENT OF THE PARTIES.

The parties may select a mediator pursuant to these Rules by agreement by filing with the Court a Designation of Mediator by Agreement. Such designation shall: state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation.

Designations of mediators and nominations of mediators shall be made on an AOC form. A copy of each such form submitted to the Court and a copy of the Court's Order requiring a mediated settlement conference shall be delivered to the mediator by the parties.

B. APPOINTMENT OF CERTIFIED FAMILY MEDIATOR BY THE COURT.

If the parties cannot agree upon the selection of a mediator, they shall so notify the Court and request that the Court appoint a mediator. The request shall state that the attorneys for the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree on a mediator.

Upon receipt of a Motion to Appoint a Mediator, or failure of the parties to file a Notice of Selection with the Court, the Court shall appoint a mediator, certified pursuant to these Rules.

In making such appointments, the Court 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. 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, they inform the Judge in writing that they agree to mediate cases to which they are assigned. The District Court Judges 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.

C. MEDIATOR INFORMATION DIRECTORY.

To assist the parties in the selection of a mediator by agreement, the Chief District Court Judge having authority over any county participating in the mediated settlement conference program shall prepare and keep current for such county a central directory of information on all mediators certified pursuant to these Rules who wish to mediate in that county. Such information shall be collected on loose leaf forms and be kept in one or more notebooks made available for inspection by attorneys and parties in the Office of the Clerk of Court in such county and the Office of the Chief District Court Judge or Trial Court Administrator in such county.

D. DISQUALIFICATION OF MEDIATOR.

Any party may move a Court 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 selected or appointed pursuant to Rule 2. Nothing in this provision shall preclude mediators from disqualifying themselves.

RULE 4. THE MEDIATED SETTLEMENT CONFERENCE.

A. WHERE CONFERENCE IS TO BE HELD.

The mediated settlement conference shall be held in any location agreeable to the parties and the mediator. If the parties cannot agree to a location, the mediator shall be responsible for reserving a neutral place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys and *pro se* parties.

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 mediator is authorized to assist the parties in establishing a discovery schedule and completing discovery.

C. REQUEST TO EXTEND DEADLINE FOR COMPLETION.

A party, or the mediator, may move the Court to extend the deadline for completion of the conference. Such motion shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the motion, said party shall promptly communicate its objection to the Court.

The Court may grant the request by entering a written order setting a new deadline for 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. If the time for reconvening is set during the conference, no further notification is required for persons present at the conference. The mediator shall inform the court at any time that a mediation conference is recessed and the time set for reconvening the conference.

E. THE MEDIATED SETTLEMENT CONFERENCE IS NOT TO DELAY OTHER PROCEEDINGS.

The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, except by order of the Court.

RULE 5. DUTIES OF PARTIES, ATTORNEYS AND OTHER PARTICIPANTS IN MEDIATED SETTLEMENT CONFERENCES.

A. ATTENDANCE.

1. The following persons shall attend a mediated settlement conference:
 - (a) **Parties.**
 - (b) **Attorneys.** At least one counsel of record for each party whose counsel has appeared in the action.

2. Any person required to attend a mediated settlement conference shall physically attend until such time as an agreement has been reached or the mediator, after conferring with the parties and their counsel, if any, declares an impasse. No mediator shall prolong a conference unduly.

Any such person may have the attendance requirement excused or modified, including allowing a person to participate by phone, by agreement of both parties and the mediator or by order of the Court.

3. **Scheduling.** Participants required to attend shall promptly notify the mediator after selection or appointment of any significant problems they may have with dates for conference sessions before the completion deadline, and shall keep the mediator informed as to such problems as may arise before an anticipated conference session is scheduled by the mediator. After a conference session has been scheduled by the mediator, and a scheduling conflict with another court proceeding thereafter arises, participants shall promptly attempt to resolve it pursuant to Rule 3.1 of the General Rules of Practice for the Superior and District Courts, or, if applicable, the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina June 20, 1985.
4. In the event that any party files no pleading and otherwise makes no appearance in the court action, fails to communicate with the Court in any way and fails to attend any mediated settlement conference, the Court may proceed to enter any final order in the case without first proceeding through the mediation procedure.

RULE 6. FINALIZING AGREEMENT.

- A. If an agreement is reached on any or all issues at the conference, the essential terms of the parties' agreement shall be reduced to writing as a summary memorandum at the conclusion of the conference unless the parties have reduced their agreement to writing, have signed it, and in all other respects have complied with the requirements of Chapter 50 of the North Carolina General Statutes. The parties and their counsel shall use the summary memorandum as a guide to drafting such agreements and orders as may be required to give legal effect to its terms. In the event the parties fail to agree on the wording or terms of a final agreement or court order, the mediator may schedule another session if the mediator determines that it would assist the parties.
- B. If the agreement is upon all issues at the conference, the person(s) responsible for filing closing documents with the Court shall also sign the mediator's report to the Court. The parties shall give a copy of their signed memorandum of agreement, agreement, consent judgment or voluntary dismissals to the mediator and all parties at the conference and shall file their consent judgment or voluntary

dismissal with the Court within thirty (30) days or before expiration of the mediation deadline, whichever is longer.

- C. If an agreement is reached upon all issues prior to the conference or finalized while the conference is in recess, the parties shall reduce its terms to writing, sign it along with their counsel and file the consent judgment or voluntary dismissal(s) with the Court within thirty (30) days or before the expiration of the mediation deadline, whichever is longer.
- D. When a case is settled upon all issues, all attorneys of record must notify the Court within four business days of the settlement and advise who will file the consent judgment or voluntary dismissal(s), *and when*.

RULE 7. SANCTIONS FOR FAILURE TO ATTEND MEDIATED SETTLEMENT CONFERENCES.

- A. If any person required to participate in a mediated settlement conference fails to attend or otherwise comply with these rules without good cause, the Court shall impose upon that person any appropriate monetary sanction including, but not limited to, the payment of attorney's fees, mediator fees, expenses and loss of earnings incurred by persons attending the conference.

A party to the action seeking sanctions, or the Court on its own motion, 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. (See also Rule 7.F. and the Comment to Rule 7.F.)

RULE 8. 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. However, the mediator's conduct shall be governed by standards of conduct 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 during the conference. Furthermore, the mediator may communicate on an *ex parte* basis with counsel for any party regarding the mediation procedure and in order to obtain information about the case that may facilitate the mediation process. Each party shall keep the other advised of any *ex parte* communications with the mediator. Nothing in

this Rule prevents the mediator from engaging in such communications as may be appropriate, with the consent of the parties, for the purpose of assisting settlement negotiations.

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 North Carolina General Statutes § 7A-38.4A(j);
 - (h) The duties and responsibilities of the mediator and the participants; and
 - (i) 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 circumstance 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 Conference.**

- (a) The mediator shall report to the Court on AOC Form 813, within ten (10) days of the conference, whether or not an agreement was reached by the parties.

The mediator's report shall inform the Court of the absence of any party or attorney known by the mediator to be absent from the mediated settlement conference without permission. If partial agreements are reached at the conference, the report shall state what issues remain for trial. The Dispute Resolution Commission or the Administrative Office of the Courts may require the mediator to provide statistical data for evaluation of the mediated settlement conference program. 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 was reached, the mediator's report shall state whether the action will be concluded by consent judgment or voluntary dismissal(s), when it shall be filed with the Court, 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 as required by Rule 4.B.2. If an agreement upon all issues is reached at the conference, the mediator shall have the person(s) designated sign the mediator's report acknowledging acceptance of the duty to timely file the closing documents with the Court.

Mediators who fail to report as required pursuant to this Rule shall be subject to the contempt power of the Court and sanctions.

5. **Scheduling and Holding the Conference.** The mediator shall 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 changed by written order of the Court.

RULE 9. COMPENSATION OF THE MEDIATOR AND SANCTIONS.

A. BY AGREEMENT.

When the mediator is selected by agreement of 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 parties shall compensate the mediator for mediation services at the rate of \$125 per hour. The parties shall also pay to the mediator a one-time, per case administrative fee of \$125, which accrues upon appointment and shall be paid if the case settles prior to the mediated settlement conference or if the Court approves the substitution of a mediator selected by the parties for a court appointed mediator.

C. PAYMENT OF COMPENSATION BY PARTIES.

Unless otherwise agreed to by the parties or ordered by the Court, the mediator's fee shall be paid in equal shares by the parties. Payment shall be due and payable upon completion of the conference.

D. INABILITY TO PAY.

No party found by the Court to be unable to pay a full share of a mediator's fee shall be required to pay a full share. Any party required to pay a share of a mediator fee pursuant to Rule 7.B. and C. may move the Court to pay according to the Court's determination of that party's ability to pay.

In ruling on such motions, the Judge may consider the income and assets of the movant and the outcome of the action. The Court shall enter an Order granting or denying the party's motion. In so ordering, the Court may require that one or more shares be paid out of the marital estate.

Any mediator conducting a settlement conference pursuant to these Rules shall accept as payment in full of a party's share of the mediator's fee that portion paid by or on behalf of the party pursuant to an Order of the Court issued pursuant to this Rule.

E. POSTPONEMENTS AND FEES.

1. As used herein, the term "postponement" shall mean reschedule or not proceed with a settlement conference once a date for a session of the settlement conference has been scheduled by the mediator. After a settlement conference has been scheduled for a specific date, a party may not unilaterally postpone the conference.
2. A conference session may be postponed by the mediator for good cause beyond the control of the moving participant(s) only after notice by the movant to all parties of the reasons for the postponement and a finding of good cause by the mediator.

3. Without a finding of good cause, a mediator may also postpone a scheduled conference session with the consent of all parties. A fee of \$125 shall be paid to the mediator if the postponement is allowed, or if the request is within five (5) business days of the scheduled date the fee shall be \$250. The postponement fee shall be paid by the party requesting the postponement unless otherwise agreed to between the parties. Postponement fees are in addition to the one time, per case administrative fee provided for in Rule 9.B.
4. If all parties select or nominate the mediator and they contract with the mediator as to compensation, the parties and the mediator may specify in their contract alternatives to the postponement fees otherwise required herein.

F. SANCTIONS FOR FAILURE TO PAY MEDIATOR'S FEE.

Willful failure of a party to make timely payment of that party's share of the mediator's fee (whether the one time, per case administrative fee, the hourly fee for mediation services, or any postponement fee), or willful failure of a party contending indigent status or the inability to pay his or her full share of the fee, to promptly move the Court for a determination of indigency or the inability to pay a full share, shall constitute contempt of Court and may result, following notice and a hearing, the imposition of any and all lawful sanctions by the Court.

RULE 10. FORMS.

- A. Attached hereto and incorporated herein by reference are such forms as may be necessary in order to carry out the provisions of these Rules.